SUPREME COURT OF THE UNITED STATES.

No. 298.

THE PROPELLER HYPODAME, HER TACKLE, &c.; THE WESTERN TRANSPORTATION COMPANY, CLAIMANTS

vs.

CHESTER W. CHAPIN ET AL., APPELLANTS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 116 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Chester W. Chapin *et al.*, libellants and appellees, against the Propeller Hypodame, &c., The Western Transportation Company, claimants and appellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 14th day of Nov., in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

2 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Tuesday, the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel R. Betts, district judge.

CHESTER W. CHAPIN *et al.*
vs.
THE PROPELLER HYPODAME, her tackle, &c. } 17, 453.

1863, Feb. 17.—The libellants file their libel against the above-named propeller, in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Chester W. Chapin, Charles H. Northam, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hard, and Richard A. Farnham, in their own behalf as owners of the schooner Chester W. Chapin, her tackle, &c., and as believes having the possession of the cargo on the voyage hereafter mentioned, and also for and on behalf of the owners of and the persons interested in such cargo, against the Propeller Hypodame, her engines, boilers, tackle, and furniture, and against all persons

3 intervening for their interest therein, in a cause of collision, and thereupon the libellants allege and articulately propound as follows:

First. That before and at the time of the collision hereafter mentioned, the libellants were the sole owners of the aforesaid schooner, her tackle, apparel, and furniture, and were entitled to the freight upon the cargo which was in and on board thereof, and in the course of transportation. That the schooner was and is a foreign vessel, owned by now residents of the State of New York.

Second. That the said schooner set sail and departed from Albany on the 28th day of November, 1862, with a full cargo of merchandise,

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" " O. M. Cook	126	54
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1 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 116 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Chester W. Chapin *et al.*, libellants and appellees, against the Propeller Hypodame, &c., The Western Transportation Company, claimants and appellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 14th day of Nov., in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the said United States the ninetieth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

2 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Tuesday, the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel R. Betts, district judge.

CHESTER W. CHAPIN *et al.*
vs.
THE PROPELLER HYPODAME, her tackle, &c. } 17, 453.

1863, Feb. 17.—The libellants file their libel against the above-named propeller, in the words and figures following, to wit:

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The libel and complaint of Chester W. Chapin, Charles H. Northam, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hard, and Richard A. Farnham, in their own behalf as owners of the schooner Chester W. Chapin, her tackle, &c., and as believes having the possession of the cargo on the voyage hereafter mentioned, and also for and on behalf of the owners of and the persons interested in such cargo, against the Propeller Hypodame, her engines, boilers, tackle, and furniture, and against all persons
3 intervening for their interest therein, in a cause of collision, and thereupon the libellants allege and articulately propound as follows:

First. That before and at the time of the collision hereafter mentioned, the libellants were the sole owners of the aforesaid schooner, her tackle, apparel, and furniture, and were entitled to the freight upon the cargo which was in and on board thereof, and in the course of transportation. That the schooner was and is a foreign vessel, owned by now residents of the State of New York.

Second. That the said schooner set sail and departed from Albany on the 28th day of November, 1862, with a full cargo of merchandise,

consisting of corn, flour, and lumber, on board thereof, bound on a voyage from thence to Providence, Rhode Island, being staunch, strong, and in all respects well supplied, officered, manned, and equipped for the voyage she had undertaken; that afterwards, while in the lawful prosecution of such voyage, and somewhere between four and five o'clock in the morning of the first of December, in the year last aforesaid, when a little below Peekskill, she was suddenly and unexpectedly run into by the propeller Hypodame and sunk, as hereinafter stated.

Third. That the circumstances of the collision, as the libellants are informed and believe, were substantially as follows: That before and at the time of the collision, the said schooner had been and was beating down the river on her larboard tack, (the wind being light, about southeast, and the tide the last of the ebb,) and going at the rate of about two or three miles an hour, with all her sails set except
4 her fore-topsail and stay-sail, and heading about southwest, towards the west shore; that she had a competent lookout stationed at the proper place, and attending to his duty.

Fourth. That the lights of the propeller was first seen as she rounded Verplanck's Point and opened up the river, bearing one point or more on the schooner's larboard bow, the propeller being then at a distance of from one to two miles off; that as the propeller approached she was heading on a line a considerable distance to the eastward of the schoonor; that if she had continued on such course, she would have passed the schooner to the eastward without the least danger or even possibility of a collision; that the schooner was kept steady on her course, and no danger was apprehended until the said propeller approached nearly up to the line of the said schooner on the course before stated, when such course was suddenly changed directly towards the schooner; that although the propeller was hailed, and such hail was heard, yet no proper attention was given thereto, and the propeller was continued on such last-mentioned direction towards the schooner, at full speed, and struck the schooner on her larboard bow, near the cat-head, cutting through her bulwarks and penetrating ten feet or more into her decks, causing her to fill with water in a very short space of time, and before she could be towed to the shore, rendering it necessary for the crew to abandon her to preserve their lives.

Fifth. That the propeller was, at the time, light and going up the river at the rate of eleven or twelve miles an hour; that she had
5 no competent or proper lookout stationed and attending to his duty; that there was plenty of room to have passed the schooner to the eastward without a collision, and there was no necessity or propriety in so changing her course towards the schooner as aforesaid; that although the night was cloudy and dark, yet it was such that the schooner might and could have been seen by a competent lookout, properly and faithfully attending to his duty, and exercising reasonable and proper attention, sufficiently to have avoided her, yet no attention was paid to her proximity by those in charge of the propeller, and no timely efforts were made to avoid the collision; that the pro-

peller was carelessly, negligently, and wrongfully run into and upon the schooner, causing the damages aforesaid; that the said collision was not caused by any fault or neglect of those in charge of and navigating the schooner, but solely by and through the neglect, inattention, and improper navigation of those in charge of the propeller.

Sixth. That so much of the said cargo as consisted of flour, belonged to and was owned by Otis Cook, and the residue of the said cargo belonged to Day & Sprague, all of Providence, for whom the libellants were transporting the same on freight; that the owners of said cargo who have respectively authorized and empowered the libellants as common carriers thereof to institute and prosecute this action to recover the damages thereto. That by reason of the said collision the libellants were put to great expense to raise and recover the said vessel, and to repair the same, and to recover, protect, and
6 save the cargo from total loss, the amount and particulars whereof cannot as yet be correctly stated. That the libellants have lost the freight upon the voyage, which was broken up and never was performed, and, in addition thereto, they lost the use of their vessel for a long time; that the entire damages sustained by and in consequence of the collision will, as they believe, exceed in the aggregate the sum of six thousand dollars, which the libellants claim to recover in this action, and which the owners of the Hypodame have been requested to adjust and settle, but which they refuse to do.

Seventh. That the said propeller is now in the southern district of New York and within the jurisdiction of this court, and that all and singular the premises are true, and within the admiralty and maritime jurisdiction of this court; in verification whereof, if denied, the libellants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the libellants pray that process in due form of law, according to the course and practice of this court in cases of admiralty and maritime jurisdiction, may issue against the said propeller, her engines, tackle, apparel, and furniture, and that the same may be attached and held to answer the damages which may be awarded to the libellants for the causes aforesaid, and that the court will be pleased to pronounce for the damages aforesaid, and to decree such damages the libellants as to law and justice appertain, and that the said propeller, her engines, tackle, &c., and all persons inter-
7 vening for their interest therein, may be condemned in such damages and costs.

CHESTER W. CHAPIN,
Per EDWARD J. OWEN, *Proctor.*

OWEN, GRAY & OWEN, *Lib'ts' Proctors.*
EDWARD H. OWEN, *Advocate.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edward J. Owen, being sworn, says that he is one of the proctors for the libellants in the foregoing libel named; that deponent has read the said libel and knows the contents thereof, and that the matters

therein stated are true to the best of deponent's knowledge, information, and belief. That the libellants are not, nor is either of them, within this district, nor within one hundred miles of the place of trial of this action, as deponent has been informed and believes. That the grounds of deponent's knowledge is information derived from the libellants, and which information deponent believes to be true.

EDWARD J. OWEN.

Sworn to before me, 17th February, 1863.

JAMES RIDGWAY, *Notary Public.*

Indorsed: 17, 453. U. S. district court. Chester W. Chapin
8 and *als.* ag't the Propeller Hypodame, &c. Libel. Owen, Gray & Owen, lib'ts' proctors. Filed 17th Feb'y, 1863.

Let the process in this case be made returnable on the 24th inst., and the process made ret'ble on that day.

SAM'L R. BETTS.

Filed 17th Feb'y, 1863.

10 District court of the United States for the southern district of New York.

Stipulation for libellants' costs, entered into pursuant to the rules and practice of this court. Filed the 17th day of February, 1863.

Whereas a libel was filed in this court on the seventeenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, by Chester W. Chapin and others, owners of the schooner Chester W. Chapin, against the propeller Hypodame, her engines, &c., for the reasons and causes in the said libel mentioned, and praying that said propeller, her engines, &c., may be condemned and sold to pay the claim of the libellants, and the said libellants and Joseph H. Gray and Edward J. Owen, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred and fifty dollars, conditioned that the libellants above named shall appear and answer to the cause, and to interrogatories, and shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

CHESTER W. CHAPIN AND ALS.,
Per E. J. OWEN.
JOSEPH H. GRAY.
EDWARD J. OWEN.

Taken and acknowledged this 17th day of Feb'y, 1863, before me.

GEO. W. MORTON, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss.*

Joseph H. Gray and Edward J. Owen, parties to the above stipulation, being duly sworn, doth each depose and say, that he resides in the city of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

JOSEPH H. GRAY.
EDWARD J. OWEN.

Sworn to this 17th day of Feb'y, 1863, before me.
GEO. W. MORTON, *U. S. Commissioner.*

Recorded the 17th day of Feb'y, 1863,
GEO. W. MORTON, *D'y Clerk.*

11 U. S. district court.

CHESTER W. CHAPIN and OTHERS
vs.
THE PROPELLER HYPODAME, &c.

It is hereby consented that the process in the above-entitled action be waived, and we hereby approve of the bond for value, &c., filed by the claimants herein, in $7,000, with A. V. Strout and Everett Clapp as sureties.

OWEN, GRAY & OWEN, *Libellants' Proctors.*

Indorsed: 17, 453. U. S. district court. Chester W. Chapin and *als. vs.* Propeller Hypodame, &c. Consent to waive process and approval of bond, &c. Owen, Gray & Owen, libel'ts, proctors. Ent'd order. Filed Feb'y 21, 1863.

12 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Friday, the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable Sam'l R. Betts, district judge.

THE PROPELLER HYPODAME, her engines, &c.,
asm.
CHESTER W. CHAPIN *et als.*

And now John Hubbell, an agent for the Western Transportion Company, intervening as agent for the interest of said company in the said propeller, appears before the honorable court and makes claim to the said propeller, &c., as the same are attached by the marshal, under process of this court, at the instance of Chester W. Chapin and others; and the said John Hubbell avers that said company were in possession of the said propeller at the time of the attachment thereof, and that the company above named is the true and bona fide owners of the said propeller, and that no other person is the owner thereof; and the said John Hubbell is the true and lawful bailee thereof, as agent; wherefore he prays to defend accordingly.

JOHN HUBBELL.

JOHN HUBBELL, *Proctor for Claimant.*

13 SOUTHERN DISTRICT OF NEW YORK, *ss:*

John Hubbell, being duly sworn, deposes and says that he resides in the city of Buffalo; that he is the agent and proctor of the Western Transportation Company above named, and that the owners of said propeller are a corporation created, organized, and existing under the laws of the State of New York, and that this deponent is duly authorized to put in this claim in behalf of the owners of the said propeller, and that the said claim is true of the knowledge of this deponent, except as to the matters therein stated on information and belief, and as to such matters, he believes it to be true.

JOHN HUBBELL.

Sworn to and subscribed this 20th day of February, A. D. 1863, before me.

GEO. W. MORTON, *U. S. Commissioner.*

Filed the 20th day of Feb'y, 1863.

14 District court of the United States for the southern district of New York.

Stipulation entered into pursuant to the rules and practice of this court. Filed the 20th day of February, 1863.

Whereas a libel was filed in this court on the seventeenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, by Chester W. Chapin and others against the propeller Hypodame, her engines, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said propeller, &c., may be condemned and sold to pay the demands of libellants, and the parties hereto hereby consenting that, in case of default or contumacy on the part of the claimant or his sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands; and whereas, also, a claim has been filed in said cause by the Western Transportation Company: Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, hereby bound in the sum two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

THE WESTERN TRANSPORTATION COMPANY,
By JOHN HUBBELL, *Proctor.*
A. V. STROUT.
EVERETT CLAPP.

Taken and acknowledged this 20th day of February, 1863, before me.

GEO. W. MORTON, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew V. Strout and Everett Clapp, parties to the above stipu-

lation, being duly sworn, doth each depose and say, that he resides in the southern district of New York, and that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

A. V. STROUT.
EVERETT CLAPP.

Sworn to this 20th day of February, 1863, before me.
GEO. W. MORTON, *U. S. Commissioner.*

Recorded the twentieth day of February, 1863.
G. F. B., *Clerk.*

15 District court of the United States for the southern district of New York, in admiralty.

Stipulation entered into pursuant to the rules and practice of this court. Filed the 20th day of Feb'y, 1863.

Whereas a libel was filed on the seventeenth day of February, in the year of our Lord one thousand eight hundred and sixty-three, by Chester W. Chapin and others against the propeller Hypodame, her engines, &c., for the reasons and causes in the said libel mentioned; and whereas the said propeller, &c., is in the custody of the marshal, under the process issued in pursuance of the prayer of said libel; and whereas it has been consented by the proctor, for the libellants that the abovenamed propeller, &c., may be discharged from custody, on the claimants giving bonds for the costs and value, the latter in the sum of seven ($7,000) thousand dollars, as appears from said consent now on file in said court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant or his sureties, execution for the above amount may issue against their goods, chattels, and lands: Now, therefore, the condition of this stipulation is such that if the stipulator undersigned shall, at any time, upon the interlocutory or final order or decree of the said district court, or of any appellate court to which the abovenamed suit may proceed, and upon notice of such order or decree to John Hubbell, esquire, proctor for the claimant of said propeller, &c., abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervene, then this stipulation to be void; otherwise to remain in full force and virtue.

THE WESTERN TRANSPORTATION COMPANY,
By JOHN HUBBELL, *Proctor.*
A. V. STROUT.
EVERETT CLAPP.

Taken and acknowledged this day of , 185 , before me.
——— ———, *U. S. Commissioner.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Andrew V. Strout and Everett Clapp, parties to the above stipulation, being duly sworn, each depose and say that he resides in the

southern district of New York, and that he is worth the sum of fourteen thousand dollars over and above all his just debts and liabilities.

A. V. STROUT.
EVERETT CLAPP.

Sworn to this 20th day of February, 1863, before me.
GEO. W. MORTON, *U. S. Commissioner.*

Recorded the 20th day of February, 1863.
G. F. B., *Clerk.*

16 At a stated term of the district court of the United States of America for the southern district of New York held in the United States court-rooms, in the city of New York, on Saturday, the 21st day of February, in the year of our Lord one thousand eight hundred and sixty-three. Present, the honorable Samuel R. Betts, district judge.

THE PROPELLER HYPODAME, &c., *ads.* CHESTER W. CHAPIN and o'RS. } 17, 453

On filing consent to waive service of process and approval of bond, &c., signed by Owen, Gray & Owen, libellants' proctors, and on motion of Mr. John Hubbell, proctor for the claimants, it is ordered that the service of process be waived, the appearance of the claimants be entered, and that the stipulation for value represent the vessel in the above-entitled action.

Filed the 21st day of Feb'y, 1863.

18 U. S. district court, southern district, N. Y.

THE PROPELLER HYPODAME, The Western Transportation Co., claimant, *ads'm* CHESTER W. CHAPIN *et als.*

I consent that C. Vansantvoord be substituted as proctor for the claimants in this suit in my stead, and that an order be entered accordingly.

JOHN HUBBELL, *Proctor.*

N. Y., Feb'y 21, 1863.

Indorsed: 17, 453. U. S. district court. The Propeller Hypodame, The Western Transportation Co., cl'mts, *adsm.* Chester W. Chapin and others. Consent to substitution of C. Vansanvoord, as cl't's proc'r. John Hubbell, cl't's pro. Ent'd order substitution of cl'mt's proctor. Filed March 30th, 1863.

19 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Monday, the 30th day of March, in the year of our Lord one thousand eight hundred sixty-three. Present, the honorable Samuel R. Betts, district judge.

THE PROPELLER HYPODAME, &c., The Western Transp'n Co., cl't, *ads.* CHESTER W. CHAPIN and o'rs.	17,453

On filing consent signed by John Hubbell, esq., proctor for claimants, ordered that C. Vansantvoord, esq., be and he is hereby substituted as proctor for the claimants in the above-entitled suit, in the place and stead of the said John Hubbell.

20 Filed the 30th day of March, 1863.

21 UNITED STATES OF AMERICA, *Southern district of New York, ss:*

To the honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

And now the Western Transportation Company, (a corporation duly incorporated under the laws of the State of New York in that behalf,) intervening for their interest in the propeller Hypodame, appear before this honorable court, and for answer to the libel and complaint of Chester W. Chapin, Charles H. Northam, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hard, and Richard A. Farnham against the said propeller Hypodame, her engines, boilers, tackle, and furniture, and against all persons intervening for their interest therein, allege and articulately propound as follows:

First. That these respondents were, before the time of the alleged collision referred to in the said libel, and ever since have been and are, the sole owners of the said propeller Hypodame, her engines, boilers, tackle, and furniture.

Second. As to the allegations in the first article of the libel, these respondents have no knowledge or information thereof sufficient to form a belief, and therefore deny the same.

Third. As to the allegations in the second article in the libel, excepting that the said schooner came into collision with the said propeller about opposite or a little above Peekskill, on the Hud-

22 son, and afterwards sunk, as hereinafter in this answer stated, and not otherwise, these defendants have no knowledge nor any information thereof sufficient to form a belief, and therefore deny the same.

Fourth. That the circumstances of the collision were not, as these respondents are informed and believe, in their general drift and in many particulars, as stated in the third, fourth, and fifth articles of the libel, but as these respondents are informed and believe they were as *as* follows: The propeller Hypodame left the city of New York in the evening of the thirtieth of November, at about seven o'clock, bound for Albany, and had arrived, at three o'clock on the next morning, just above Vredideker Hook, on the Hudson river, at the lower end of Haverstraw bay, having before that at no time proceeded at a greater rate of speed than at the rate of six miles an hour. That from that point, the night being dark and foggy, the rate of speed of the propeller was reduced, and she proceeded much slower and very slow. The fog cleared up a little, but the night con-

tinued dark and thick as the propeller continued on her course up the river at a low rate of speed, with one bright light on the stem forward, which shone right ahead and four points on either bow, two bright lights on the flagstaff aft, which shone all around, a red light on the larboard side, and a green light on the starboard side on top of the pilot house, and with a competent lookout placed in a proper position on the forward part of the propeller and attentive to his duty, as also
was the master and pilot of the propeller and the other officers
23 and men in charge of her navigation. While so proceeding, when the propeller, after having passed above Verplanck's Point, was a little below the point of the Dunderberg, the lights of a steam-tug and tow were seen above the point in the race and pretty well over to the eastward, coming down, and the propeller made a course to go to the eastward of the tow, and kept on that course until it was observed on the propeller that she would be crowded for room in going to the eastward between what appeared from her light to be a vessel at anchor and the boats in tow of the steamboat, when the usual signal by two blasts of the steam-whistle was given on the propeller of her intention to go to the left or to westward, which was responded to from the steam-tug by two blasts of her whistle, signifying her assent to that course, and then the course of the propeller was changed to westward to pass said steam-tug and her tow to the left, where there was plenty of room. Shortly after this change had been made a hail was heard on board the propeller from some boat or vessel on the river, which, as it afterwards appeared, was from the schooner mentioned in the libel, but no boat or vessel could be seen from the propeller by reason of the thickness and darkness of the night and the omission on the part of the schooner to show a light. The propeller's engine was immediately slowed, and then stopped, and just as she was stopped the head-lights of the propeller shone on the sails of a vessel, which proved afterwards to be the said schooner, on a course southwest, between the said
steam-tug and her tow and the propeller. The bells of the
24 propeller were rung to back, and this order was promptly obeyed, and her helm was ported to ease the blow of the collision, which was inevitable by any effort on the part of the propeller, from the close proximity and course of the schooner at the time of the hail and of the discovery of her position on the propeller. After the collision and the propeller had backed off, on hearing a cry from the schooner that she was sinking, the schooner was towed over on to the edge of the flats at Peekskill by a hawser from the propeller, and she went down in about 20 feet of water, having previously been left by the captain and crew of the schooner, who took to her small boat. After the master of the propeller had given to the captain of the schooner a globe lamp to put in the rigging and a pail to bale the water out of his small boat, and advised him to telegraph to his owners, and undertaken to notify his shippers at Albany, the propeller proceeded on her way up the river. That by reason of the thick darkness of the night, and in consequence of the omission on the part of the schooner to take the usual precaution under like circumstances

to show a light as the propeller was approaching, the presence or place of the schooner could not be sooner discovered from the propeller, and the casualty to the schooner was caused by this omission on the part of the schooner under the circumstances, or the want of a proper lookout on the schooner attending to his duty. That with notice from the signals of the intended change of course of the propeller, and of her presence and direction from her lights, the persons in charge of the schooner, if attending to their duty, might
25 and should, under the circumstances, as an ordinary and usual measure of precaution for their own safety, have exhibited a light or apprised the pilot or persons in charge of the propeller of the presence of the schooner by hails to the propeller in season to have enabled the propeller to avoid the collision. These respondents further answering the allegations in the third, fourth, and fifth articles in the libel, and the matters therein contained, admit that the wind at the time of the collision was light and about southeast, and the tide at the place of the collision about slack-water, but they deny, on information and belief, that the schooner had a competent lookout stationed in the proper place or attending to his duty. They, on information and belief, also deny that the course of the propeller was suddenly changed, or otherwise changed, except as is herein expressly admitted; also that any hail was given or heard from the schooner, except as herein above expressly admitted; also the allegation that no proper attention was given to such hail on the part of the propeller; also that the propeller was continued, after a change of her direction, at full speed, or otherwise than as is hereinabove expressly admitted. They admit that the propeller was not loaded, but on information and belief, they deny that she was going up the river at the rate of eleven or twelve miles an hour, or at any greater rate of speed than is above herein stated. That as these respondents are informed and believe, it was not true that the propeller had no competent or proper lookout stationed, and inattentive to his duty, nor that there was plenty of room to have passed the schooner to the eastward under the circumstances of the obstacles ahead on that course,
26 nor that there was no necessity or propriety in said propeller's changing her course as she did as above herein stated, nor that the night was such that the schooner might and could have been seen by a competent lookout on the propeller proper, and faithfully attending to his duty and exercising reasonable and proper attention, sufficiently to have avoided the schooner under the circumstances of the omission on the part of the schooner to show a light, nor was there any failure on the part of the propeller to pay all proper attention in her power to the proximity of the schooner, or to make such efforts as was in her power to avoid the collision as soon as the proximity and place of the schooner was or could be ascertained by the persons in charge of the propeller, under the circumstances of the darkness of the night and the omission and fault of the schooner in not showing a light, and in not giving earlier notice of her presence or proximity.

And on information and belief they deny that the propeller was

carelessly or negligently or wrongfully run into or upon said schooner, or that said collision was caused through any neglect, inattention, or improper navigation of those in charge of the propeller, and allege that the said collision and the damages arising therefrom was caused by the want of a proper lookout being kept on said schooner, or the inattention or fault of the persons in charge of her navigation, and that the same was inevitable by the exercise of due and proper care and skill on the part of the propeller. That in respect to the
27 other allegations in said third, fourth, and fifth articles of the libel not herein expressly admitted or denied, these respondents have no knowledge nor information sufficient to form a belief, and therefore deny the same.

Fifth. These respondents admit that they were requested to adjust and settle the claim for damages from the collision, and that they refused to do so, but they had and have no knowledge nor any information sufficient to form a belief thereof of the nature or extent of the damage arising from said collision, nor of the necessary expense of raising or recovering or repairing said schooner, or of recovering or protecting the cargo, or of the truth of the allegations respecting other matters in the sixth article of said libel, and therefore deny the same, and each and every part of the allegations in said sixth article of the libel, except so much thereof as is herein expressly admitted. But they allege, on information and belief, that neither said collision nor any damage therefrom was occasioned by any want of due care, skill, or other fault on the part of the persons in charge of the propeller, nor was there any want of due care, skill, or any fault on the part of *the part of* the persons in charge of said propeller; and that, on the contrary, said collision and the damage therefrom was occasioned by the inattention and fault as aforesaid of the persons in charge and navigating said schooner, and that at all events the same did not happen without some fault on the part of said schooner, conducing to produce the same, in not keeping a proper lookout or taking other precautionary measures in her power to avoid said collision and
28 the damage arising therefrom.

Sixth. These respondents admit that said propeller was in the southern district of New York at the time of filing the libel herein, and within the jurisdiction of this court, and they allege that all and singular the premises in this answer are true.

Wherefore these respondents pray that this honorable court will be pleased to pronounce against the libellants aforesaid, and condemn the libellants in costs, and, otherwise, right and justice to administer in the premises.

THE WESTERN TRANSPORTATION CO.,
By HUGH ALLEN, *Ag't.*

C. VANSANTVOORD, *Proctor and Advocate.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 28th day of March, 1863, before me personally appeared Hugh Allen, who being by me duly sworn, did depose and say that he was and is the agent in the city of New York of the Western

Transportation Company, the respondent named in the foregoing answer; that he has heard the foregoing answer read, and knows the contents thereof, and that the same was true of his own knowledge, except as to the matters therein stated on information and belief, as to which matters he believed the same to be true.

[SEAL.] WM. BRUORTON,
Notary Public in and for the City of New York.

29 Indorsed: 17, 453. U. S. district court, southern district of New York. The propeller Hypodame, &c., *adsm.* Chester W. Chapin and others. Answer. C. Vansantvoord, proctor for respondents. Filed March 30th, 1863.

30 United States district court, southern district of New York.

CHAPIN and OTHERS
vs.
THE PROPELLER HIPPODROME, her boats, tackle, &c., the Western Transportation Company, claimant.

NORTHERN DISTRICT OF NEW YORK,
County of Erie, City of Buffalo, ss:

John Hubbell, of the city, county, and district aforesaid, being duly sworn, says that he is the general counsel for the Western Transportation Company, the defendant and claimant in the above-entitled cause, and that he is as familiar with the facts and circumstances out of which the pretended cause of action set forth in the libel in this cause arose as any of the officers or agents of the said claimant; that he has made a full and thorough investigation into the facts of *of* the collision referred to in the said libel, and that the defendants and claimants in said cause have a good and substantial defence on the merits in said cause, as this deponent verily believes, and as he has advised the said defendants and claimants; and this deponent further says that James Finley is a material and necessary witness for the defendant and claimant on the trial of this cause, without the benefit of whose testimony it cannot safely proceed to trial, as deponent verily believes. That the said James Fin-

31 ley is an engineer by profession, and was employed as such on board the propeller Hippodrome, and had charge of the engine at the time of the accident, and is well acquainted, as deponent is informed and believes, with all the facts attending the same. That the said Finley is now, and during the whole of the present season of navigation has been, employed upon the lakes between Buffalo and Chicago as first engineer upon the steam vessel or propeller Tonawanda. That he left Buffalo upon the said propeller before deponent was informed that the day had been fixed for the trial of this cause, and has not been within the reach of a subpœna at any time within two weeks, as deponent is informed and believes; and this deponent further says, that from the nature of the business and employment of the said Finley he does not expect to be able to procure his

attendance as a witness at the trial of this cause until after the close of navigation for the present year, which will be about the first of December.

JOHN HUBBELL.

Sworn before me this 4th day of November, 1863.
N. K. HALL, *District Judge of the U. S. for the Northern Dist. of N. Y.*

Indorsed: 17, 453. U. S. dist. court, S. D., N. Y. Chapin *et al.* vs. the Propeller Hippodrome, the W. T. Co., claimant. Affidavit of John Hubbel. C. Vansantvoord, proctor for resp'd'ts and cl'ts. Filed Nov. 6, 1863.

32 At a stated term of the district court of the United States of America for the southern district of New York held at the United States court-rooms, in the city of New York, on Friday, the 20th day of March, in the year of our Lord one thousand eight hundred and sixty-three.

Present, the honorable William B. Shepman, district judge.

CHESTER W. CHAPIN *et als.*
vs.
THE PROPELLER HYPODAME, her tackle, &c. } 17, 453.

This cause coming on to be heard, pleadings read.

Evidence for libellants: Deposition of Edwin C. Stevens read; deposition of George E. Willard read; Richard A. Farnham sworn.

Evidence for claimants: Charles B. Dubois sworn; cause adjourned.

Saturday, Nov. 21st.—Cause resumed. Evidence for claimants: Charles B. Dubois recalled; James Findley sworn; Peter P. Miller sworn; Elias Crapser sworn.

33 Evidence for libellants: James Ackerly sworn; deposition of Addison D. Woolsey read; testimony closed; cause adj'd; arg't reserved.

Saturday, Dec. 5.—Mr. Vansantvoord argues for claimants; Mr. Owen argues for libellants.

C. A. V.

34 U. S. district court, so. dist., N. Y., Nov. term, 1863.

CHESTER W. CHAPIN *et als.*
vs.
THE PROPELLER HYPODAME, &c. } Collision.

Nov. 20, 1863.—Mr. Owen reads libel; Mr. Vansantvoord reads answer.

Evidence for libellants.

Deposition of Edwin C. Stevens read.

Richard A. Farnham sworn: Been master of vessel 25 y'rs; been on Hudson river a good deal; perfectly acquainted with the Chapin. This collision occurred about 4 o'clock in the morning; I saw the lights of the steamer as soon as they opened out as she rounded Verplanck's. I was about Dunderberg, but we was sagging along, which brought us

about square against the lights. We were not over a ¼ of a mile from the west shore, as I have taken the bearings since as I have passed along. The wind—we had a pretty good breeze that night—*wind* about So. E., our vessel was heading about So. W., a little westerly; might have been So. W. by W. We had mainsail, foresail, jib, flying-jib, and main-topsail. I was at the helm; Mr. Stevens and Mr. Willard were both forward to look out and tend the head sails.
35 Stevens was my mate; we had 5 men all told, including myself; the other two were below asleep; mate, Willard, and myself had been on deck since 10 o'clock. We had a light burning on the uppermost step of the cabin stairs—our cabin opens aft. I had it there to signal with if I sh'd meet a steamer; I think I had shown it before the collision that night. I saw the H. as she came round Verplanck's Point, nearly 2 miles off; she was 2 points on my larboard bow. I did not observe but 2 lights on the boat, one of them, I think, was forward and one aft. As she approached us she was running off toward the larboard, and the more she approached us the more she showed her lights. She was on the line to pass us to the eastward, some rods; think she would have gone 40 rods to the E. I saw her lights as she was passing up, and when she had reached to a point 5 points on my larboard bow, she changed her course and came right for my bow, and her lights appeared to be on a straight line. I hailed and said, in the name of God, are you coming into us, or are you going to sink us. I said, stop your boat, you are going to sink us. The other two men hailed also; we all hailed as loud as we could. My first hail was made as soon as her lights were pointed for me. I did not address my mate, I directed my voice to the steam-
36 boat. I did not display my light, because it was so short a time after the boat got headed towards me. I think my vessel could have been seen from the steamer by a competent lookout for ½ a mile. Just before she hit she seemed to change her course a little by moving her wheel, and struck us a glancing or quartering blow on our larboard bow, about by the cat-head, the line of her direction being from the cat-head to the foremast; she went in about a foot into the main deck, clear down to light water-mark, which was 3 feet under water as she was loaded—our foremast about 16 feet from stem; our cat-head about 4 feet from stem; she was 85 feet keel. Our bulwarks were made of white oak, inside and out, of 1½-inch plank. The hull of the vessel was white oak and white chestnut, 12 inches through; deck beams, white chestnut, and sheathing of deck white pine, 2½ inches; knees, white oak; they were cut right off square, one beam and one carline—beam, 14x8, 6x6; cut off 2 pr. of knees, I think, say 5 inch. thick. My vessel might have been going a mile and a half an hour; the wind had slacked away; she was under steerage way; we were heading away from the line of the steamer toward the western shore to anchor. The collision took place about
37 on a line from the lights in the dwelling at Peekskill to Caldwells's Landing. I heard no hail from propeller—no bells; don't understand the whistle signals of the steamer. From the time I first discovered her lights to the time of collision, think not over ten minutes; think the steamer's speed was pretty quick.

Cross-ex'd:

This schooner was built in Madison, in 1854; collision, Dec. 1, 1862. I was about off Dunderberg Point when I saw the boat first; I was there still when the collision took place; we had naturally gained a little. It was last of the ebb, nearly slack-water, when the collision took place; we were right off Mr. Ten Eyck's house; I took the bearings after I got into boat. The boat got out a hawser *out* and towed her not twice her length. The blow slewed the vessel round so that her head was to the NE., and the capt. of the steamer gave us a hawser, and we made it fast, and said he would tow her on to the flats; she soon sunk and I went into the water; they aferwards pulled me into the boat, and the steamer gave us a lantern and a bucket to bail out our boat. It was half to ¾ of an hour from the time of collision till I reached the shore. I took the bearings of my vessel, where she was sunk, after I got ashore; she was not on the bottom, but was
full of water, under water. Stevens was on forward and had to
38 look out and tend the jib. Willard was forward. It was the
particular duty of these men to look out and tend the sails; they both understood their business; gave them no instructions that night. I did not hear whistles or signals; don't know what they mean.

Q. Did you ask the men forward, or either of them, at any time before the collision, which way or how the steamer was coming, or words to that effect?

A. I don't recollect of directing my discourse to my men; I called out to the steamboat.

I do not recollect that Willard told me that the steamer was coming right towards us at any time before the collision; I saw her all the while. I think it might have been 10 minutes from the time I first saw her, but can't say positively; can't judge well of the time. I first hailed the steamer, we all then hallooed. If she had kept her course she would have passed us, but she changed her course and come into us; at the time she changed she bore between my fore and main rigging, 5 points on my larboard bow.

Deposition of George C. Willard read. Libellants rest.

39 *Evidence for claimants.*

Charles B. Dubois, sworn: For 23 or 24 years boatman, on everything from ship to sloop; last 12 to 13 on steamers; from deck hand to master; been for 7 years past on this river; was in command and pilot of the Hypodame at time of collision; she was screw steamer and new, tug, 2 months old. She was on passage up the river from this city to Albany; left here Sunday ev'g, 30th Nov. I came on deck just above Dediker Hook, lower end Haverstraw bay, between one and two o'clock. It was very thick and dark. I continued on deck till collision, looking out and moving about the vessel. The pilot-house is about 18 feet from her stem, the best place for a lookout; we could have a lookout further forward, but he would have to sit on an anchor stock: he could not see on the deck below; the bulwarks were high; good place on her upper deck. I was in the pilot-

house on the lookout, and James Ackerly was at the wheel. The collision took place right opposite Dunderberg Point, at lower end of the race. When we rounded Verplanck's Point we passed a tow, to the E. of her. I made up my mind then that if it did not clear up I would run to Caldwell's and hold on; I got there, and the
40 thought struck me that it was dead low-water, and there would not be water enough alongside the dock. I thought I would let her work along up slowly and near to Fort Montgomery and let her hang on there, as it was a thicker night than I like to run. When I got to just below Dunderberg P't I saw a tow pretty well to the E. I made up my mind at first to go to the E. of her, but I discovered a vessel at anchor near the E. shore and I was afraid I sh'd not have room to clear this steamer's hawser tiers. I signalled, by 2 whistles, that I would go to the westward. As we got her head turned so as to clear the tow, I heard a shout after a few minutes; Ackley was at wheel and I told him to slow her. I supposed it a small boat, and asked Ackley where it was; he replied he could not see any. I then reached down to the bell and stopped the boat, shifted my helm aport again to resume our original course; supposing from the hail that there was something in the way, I took hold of the wheel to throw it over. The first thing I saw was our head-light right on the schooner's jib; struck her near the cat-head. From the time when our head-light struck her sails till the collision you could count 5 or 6, not more. After we backed off, I hailed them and asked why they did not have a light; somebody answered, We haven't got no light; oh, my God, we
41 are sinking. I backed clear of her; told them to take a hawser and I w'd tow her ashore. They were all in the small boat. Somebody took our hawser and we started for Peekskill flats; we towed her 5 or 6 minutes, when she took a dive and went down head foremost, and one of my men took an axe and chopped the hawser off. I hailed the crew in the boat, and they came with water in boat; gave them bucket and light, and went on. The tow I spoke of was a sidewheel *wheel* steamboat with boats in tow; she responded to our signal from whistle, 2 blasts. The usual signals are 2 blasts of the whistle to pass to the left and one to the right; we give them to sail vessels as well as to steamers. The first intimation I had that a vessel was in the way, was our light on sail; I supposed the hail proceeded from a ferry boat, row boat, that runs there. If the vessel had shown a light I c'd have cleared them; it was a good time to see a light; c'd have seen a globe lantern 1½ to 2 miles that night. It is the usual practice on said vessels to exhibit a light. There was time to have shown this light after the hail, and still given us time to avoid her; we could have, possibly, seen a vessel 3 times the length of this room that night, at that point. If I had known what the hail came from, and the position she was in, I could have cleared her after the hail.

42 Cross-ex'd:

I had been pilot on the river 16 or 18 y'rs—on this river or steam

boat for the last 6 or 7 y'rs. I was master that night and had one pilot on board.

To the court:

Q. You say that at the time of the collision, and just before, you was in the pilot-house on the lookout?

A. Yes, sir.

Q. Who was then in charge of the navigation of your boat as pilot?

A. I was.

To Mr. Owen:

At the instant of collision, I think, there were three of us in the wheel-house, self, Ackley, and Flack; the latter had just come in; I c'd not say where he came from. Our crew consisted of 11, all told. We had two engineers, 2 firemen, 3 deck hands, one pilot, myself and steward. I think I had blown my whistle before Flack had come into the pilot-house; he had to look after lights; I was lookout; it was dark that night, and I had rather trust myself than any other man aboard. The tow was in the lower part of the race when I changed my course; I saw her lights, looked at them, kept my eye on them. After the tow responded she did not sheer; it was not her duty; she w'd not do it, did not, I am sure. The wheel was not put hard to starboard—one turn of the wheel. I heard the hail. The
43 sound of the hail was immediately ahead as near as I c'd judge. It did not sound as if they were frightened. After hail Flack went out on upper deck. The bell had rung to stop when Flack went out. I was abreast of Caldwell's when I discovered the tow; we were headed 2 points to the E. of her; sh'd have cleared her 200 ft., probably. Then we changed to go to the west; the tow was not far from the middle of the river, but a little to the east. If I had continued my course to the E. of the tow I sh'd possibly have gone to the E. of the p't of collision, but not much. We were running 6 miles an hour when we blew the whistle. We started from the Lackawanna coal docks, Brooklyn, and rounded the Battery about 7 o'clock. We stopped at glass-house; some tinkering to be done by the engineers; I went to bed; the pilot started her from there himself; left there ½ past 10 about; the old glass-house is in upper part of city. From glass-house to collision 38 or 39 miles; 43 m. from Battery to Caldwell's. I don't think I could see further east than west side of the river. No wind of any consequence; not foggy, but a heavy, soggy night; at the time of the collision the tow was abeam of me, and the schooner was between me and the tow. If I had not pulled
44 her out of the way the tow's hawser tiers would have hit her. We got our wheel hard aport before the collision. When I firs saw the schooner she was a little on my larboard bow, heading toward the western shore.

Re-direct:

Channel was ⅓ of a mile wide at the point of collision, sh'd judge We drew about 8 feet of water aft. I reported the loss of th schooner at once when I got to Albany.

Adj'd.

Saturday morning, Capt. Dubois, recalled.

To Mr. V. S.:

I should think in neighborhood of 4 or 5 minutes from time I changed course to W., when gave signals on whistle, till time when I heard hail from what proved to be the schooner. From hail to collision, short; had time to remark, Where is that small boat—time to count 5 or 6 slowly. They might have hailed before and I not hear it, as the boat makes a good deal of noise going through the water It would have taken 1½ minutes to 2 m. to have stopped propeller in water. If a light had been shown after I changed my course and before the hail, I could have changed my course or stopped and cleared her. If a light had been shown at the time I heard the hail I think I might have possibly cleared her then.

45 Re-cross:

When I first changed to go to the west I must have been between Caldwell's Landing and the point of Dunderberg. When I had changed I was heading nearly square up the race; before I changed I was heading more to the E. From Caldwell's to Dunderberg it may be ½ to ¼ of a mile. Propeller 119 feet long; her bulwarks were about 4 feet, forward. Our anchors were on a rack higher up than the bulwarks. If I had seen the light at the time of the hail I should have tried to clear her, and put my wheel port or starboard, as I saw the light either on my port or starboard bow. We were not going at that time more than 3 or 4 miles an hour. Her best speed about 12 miles an hour when light. When I turned to the west the tow bore 1 and ½ points on starboard bow. Not a licensed pilot. We met the first tow just as we rounded Verplanck's Point.

James Findley, sworn:

Engineer; on duty at time of collision; my engine-room on deck; my watch began at 1 o'clock; continued till collision; did not see the collision, felt the jar; 1 bell was rung to slow, 1 to stop; I obeyed
46 them, slowed and stopped; the engine was still before the collision. Before that had heard a blast from the steamer's whistle. The order to slow was about five minutes after, as near as I remember; between these times I had gone below to oil the engine and got back. It would take 1½ or 2 minutes to bring her to a dead stop. It was a dark night, kind of rainy, thick weather, but not foggy. Came out on deck after accident, but did not see the schooner when I first came out; looked and tried to see her. Saw her in about a minute, saw a man come forward on the schooner with a light, and heard him say, Good God, we are going right down. Could not see her till I saw the light. It was so dark I c'd not see an object but a short distance. Saw another steamboat with tow; saw her lights; it was further up the river. There was a hill on the left-hand going up, but did not notice on the right; did not look.

Cross-ex'd:

Been in propeller since built; 160 horse power; 75 lbs. steam. Was

carrying 50 or 55 lbs. steam when I came on deck. At 2 we reduced to 45, carried this till collision; heard the whistle, but not the hail. I went below to fill my oil-can, to oil, and while doing it, the bell to slow struck, and I then returned to obey. I had to go up about
47 six steps to reach the engine-room. I took the lever and slowed her; the bell to stop was almost instantaneous. I stopped the engine, and at once the jar was felt.

Peter P. Miller, sworn:

1st engineer; been on her about 3 months *about.* Forward she was very sharp, built for speed; draught was, with feed-water, 9 ft. and over, heavy built, for sea-going; carried water in her tanks; water in them that night. Her weight, including water, fuel, and engines, was, sh'd think, between 2 and 300 tons. I turned in between 2 and 3 o'clock; observed the night, very dark; heavy, gloomy night; I directed the 2'd engineer between 2 and 3 to reduce steam to 45 lbs. and throttle her down and run slow, because dark night. I heard the signals, 1 bell to check, one to stop; knew from motion of vessel that they were obeyed, was checked in 3 or 4 seconds, and stopped immediately as the bell rung. Don't recollect feeling any jar of our boat when she struck. A very short time from stopping the engine and the collision, 2 or three seconds only. I came out on deck after collision, run around the vessel and could not see her; I did not see her till we backed down close to her, some time after, when we were backing down to get hold of her. I saw some lights coming down the river, supposed a tow; left N. Y. between 10 and 11, the glass-
48 works; left Battery about six o'clock, had supper after.

Cross-ex'd:

We had about 20 tons of coal on, 25 to 28,000 gallons water, when we left N. Y.; we use fresh water; we probably had consumed ½, not half, of this water at time of collision. Highest speed, light as she was that night, 12 miles per hour, 75 lbs. steam; we carried from 40 to 60 lbs. that night, and run about 7 or 8 miles an hour; I refer to the time I was in charge, before she was checked down.

Elias Crapson:

Pilot; was on the Hypodame; not on duty at time of collision; came out after collision; took the wheel when we towed her; towed her about 10 minutes; dark night, darker in looking up the race on account of mountains, lighter as you looked down; channel at lower end of the race ½ a mile, sh'd think. I supposed the schooner was first-rate one when I saw her at Albany, but on looking at our bow next morning I saw a good deal of rotten wood on our bow. I have been pilot of steamboat 14 y'rs, been licensed pilot about 7 years. Left the glass-house about 11 o'clock; I had charge till after 12; capt. below at that time; I turned in just above Yonkers, I think; left James Ackley at wheel; I told him after the moon went down it w'd be dark; if it's very dark you had better call me, as you are not hired for a pilot; if anything should happen it would make bad business; he did

not call me; when I heard the bells I got up; she struck just
49 as I got on to the floor; the collision was just below the Point, about off Kidd's works. From Kidd's to glass-house, a little over 40 miles, about slack water; we had the tide against us when we started.

Cross-ex'd:

We generally kept to the E. of tows at this point. If there was vessel in the way E. of the tow I sh'd go to the W. It would be darker towards the W. bank.

Respondents rest.

Libellants resume.

James Ackley, sworn:

Was in the pilot-house at time of collision; took the wheel between F't W. and Yonkers. When the capt. came to pilot-house we were nearly off the Hook. After we turned Verplanck's Point we saw a tow coming down; the capt. asked me which side of the tow I was going; I s'd to the E.; there was no difficulty in going to the E.; light streak to the E. The capt. said, Guess we will go to the W., and took hold of the wheel and hove it over astarboard; after he took hold of the wheel, I let go of it; can't say if wheel went hard over; pretty well over, I know; she obeys quick. After we put wheel astarboard 1st time, heard a hail ahead; had not got the wheel down before the hail was heard; then I told capt. to stop the boat, there was something ahead; he did not stop her; wheel was then put aport; I then
50 pulled one bell; after I pulled the first time, I had not got my hand off the bell before I pulled it again, and then I saw the schooner's sails. If our wheel had been kept astarboard, as we first put it, we should have gone down the river.

Cross-ex'd:

I have been on the H. Hudson; have piloted tug-boats up and down, but can't tell the names; I took 3 up last fall; took up the A. T. Morris. Before the change of wheel to starboard, I had been busy steering the boat.

Deposition of Addison D. Woolsey, to contradict Capt. Cowles.

Dec. 5, 1863.—Argument, Mr. Vansantvoord, for cl'm'ts; Mr. Owen, for libell'ts.

C. A. V.

51 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, her engines, &c.

It is hereby consented that Edwin C. Stevens and George E. Willard be examined *de bene esse* in this cause as witnesses on the part of the libellants at the office of Owen, Gray & Owen, attorneys for said libellants, No. 72 Wall street, on Friday, the 30th day of Octo-

ber, 1863, at 10½ o'clock in the forenoon of that day; that the deposition of said witnesses, when sworn to before a notary public or commissioner of deeds, may be read in evidence on the trial of this cause with like effect, subject to all legal exceptions, as if it had been regularly taken before a justice of this court, under an order issued for that purpose; that the same need not be filed, but may remain in the possession of the libellants' attorneys, a copy being furnished to, or allowed to be taken by, the claimant's attorney.

New York, October 30th, 1863.

C. VANSANTVOORD.

52 U. S. district court.

CHESTER W. CHAPIN *et al.*
vs.
THE PROPELLER HYPODAME, her engines, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Edwin C. Stevens, a witness produced and examined *de bene esse* on the part of *of* the libellants, being sworn, deposes and says: I am a seafaring man; I am thirty-two years old; I reside at Westbrook, Connecticut, and am now bound on a voyage to Georgetown, and expect to leave this port in a short time; I was the mate of the schooner Chester W. Chapin at the time of the collision between her and the propeller; the schooner was at the time on a voyage from Albany to Providence with a cargo of corn and flour in the hold, and lumber on deck; she had a full cargo; there were five persons on board, officers and crew, all told; I was on deck at the time of collision, and had been so since ten o'clock; the collision occurred about four o'clock in the morning, a little below Peekskill; Captain Farnham was at the wheel; he had been there ever since we got underway; we got underway at *at* Polypus island at ten o'clock; we were called at ten o'clock by the watch; we passed one sloop in coming down, and one steamer went down past us; we had a light out when the
53 steamer passed us; the captain had one aft which he swung; it was a rather dark, cloudy night, it had rained some in the early part of it; just before, and at the time of collision, it was rather dark, but not raining; there was no fog; I should judge we could see a vessel like the schooner without a light a half a mile; we could see the make of the land, that is, we could distinguish the land so as to know that it was land near Peekskill; when the collision occurred we were not, in fact, on either tack; the boom had swung in midship, and we were drifting with the tide, which was ebb, near the last part of it; we had been on the starboard tack, by which I mean that the vessel was going off to the starboard; when we were on the starboard tack we were heading to the northward, the sails were on the larboard side; we were tacking ship along down through the Race and stood in above Peekskill, and then we tacked and came about on the larboard tack, and then the wind left us and the boom swung in and we drifted down. I saw the propeller some time after she came round Verplanck's Point, I can't tell how far above; the

light bore a little on our larboard bow; we were then drifting, our boom had swung in; I should think the propeller was then half a mile off; she appeared to be heading up the river, so that the course would have cleared us at that time; she would have gone to the eastward; I should think she would have cleared us a quarter of a
54 mile; we were then heading a little towards Caldwell, towards the land on that side, as near as the tide would allow us. Soon after I heard the whistle sound, then I observed that the light had changed its bearing and brought it more ahead of us; the captain then spoke and asked which way, or how, the steamer was coming, or words to that effect; I was at that time along nearly amidships; George E. Willard then answered that she was coming right towards us; I then went forward by the windlass and George began to halloo to the steamer, and I believe then we all commenced; George, I believe, hallooed first, and then we all hallooed as loud as we could; I should think the propeller was five or six of our schooner's length off when we commenced hallooing; I don't know as I can judge how far she was off when I discovered by her lights that she had changed her course; very soon after this we commenced hallooing; if the propeller had heard us when we first commenced hallooing, I think she might have avoided us; I think when she blew her whistle she could have seen our vessel; I think our schooner could have been seen at that time a half a mile off; the propeller appeared to be coming very fast; I did not hear any bells on the propeller; she appeared to be coming right forward at her usual speed; when she struck us we were frightened; the fright commenced as soon as she changed her course and had the appearance of coming into us; I did not understand the whistles; I did not know what they were for; I did not hear
55 any other whistle; I don't know anything about the signals given by whistles; I should judge that the collision occurred a little below Peekskill, near the middle of the river; the propeller did not come exactly head on, but a little quartering, and struck just forward of the cat-head on the larboard bow; she cut in, I think, about six feet into the deck; about the time she struck the other man and the steward came out; I think they were woke up by the noise; I stood on the lumber forward at the time of the collision; I then went aft and the others had got the boat lowered away, and some of them were in the boat; we all got into the boat and pulled out clear from the vessel; we then lay on our oars and looked at her and concluded that we might have been more scared than anything else, and we pulled back alongside; I then went with one of the other men on board and went into my room and got out some of my clothing; the other man pulled out a small trunk out of the captain's room; we then left and pulled alongside of the propeller, and the captain of the propeller said if we could make his hawser fast he would try to tow us in on the flats at Peekskill; I went on board and made the hawser fast forward; she was settling down then, forward, quite fast, and then got into the boat and shoved out clear of her; they got headway and towed a short distance in towards the flats and then she settled under bodily, but did not go down; the propeller then cut the hawser and

went on her way up the river and we pulled in towards Cald-
56 well; we pulled in to the southward and westward for this,
and went ashore; we remained there until daylight and then pulled out to where the collision took place, as near as we could judge; we did not find the schooner then, and as it was a strong flood tide we supposed, if she had not gone down, she must have drifted up the river; we pulled up the river, and finally came in sight of her at Fort Montgomery; her decks were under water; from that time we had possession; we first got the lumber; before this she had drifted up to Capt. Foroat's Landing and there she grounded and we borrowed some lines and made her fast. Here we took off the deck-load of lumber and put it on a sloop; afterwards, some fourteen days, we got up the vessel and had her towed down to the city; we had a steam derrick to raise her; she was afterwards taken to Fairhaven, Connecticut, to be repaired; I am not connected with her now. The wind before the collision had been southeast, I think.

Cross-examined:

I shipped on board that schooner the first Monday in October, 1862; I believe went to Albany the first trip; I think she run to Albany all the fall, and that the trip on which the collision occurred was her third trip; it depended altogether on the wind whether the captain and mate were in the same watch; when we had a fair wind they generally went watch and watch, but when we were beating down,
one part of the men stood anchor watch, and when we got under
57 way the rest were on deck; the captain and I were generally
both on deck; I mean that in beating down, when the tide was against us and the wind also, we came to anchor and set an anchor watch, and the rest of the crew went below and when we got under way, the anchor watch went below and the rest were on deck; this brought I and the captain on deck at the same time; I don't know how steamboats give signals of their intended movements; I am not acquainted with that class of vessels; I know that they give signals by the blast of their whistles, sometimes they give one and sometimes two, but I should not know what they meant by them; I heard a blast from the propeller, I did not hear but one, I did not notice, have no recollection about it; it did not occur to me at the time as matter of importance; I saw the propeller's light before I heard that blast of the whistle; I did not see but one light; the light bore on our larboard, and she appeared to be going pretty well to the eastward of us; I noticed an alteration in the bearing of the light soon after I heard the whistle; it brought the light in more towards us, more ahead of us; the captain then asked where she was coming, or how she was coming; this was as soon as I saw the change in the bearing of the light; I did not mention it to him, he stood looking at the light; Willard replied to him that she appeared to be coming right for us. I know that we had a light shown to a steamer in coming down, but I can't say it was in the Race; I
think it was a little above; this was the same night, as we
58 were coming down; we showed the light so that she could
see that we were in the river; she was pretty near us an.

coming down the same way we was, and we put the light out; I think the captain swung it once or twice and then set it on the house by him; he was then at the wheel.

Re-direct:

I should think it was a little darker when the light was so shown than at the time of collision.

EDWIN C. STEVENS.

Sworn before me this 30th Oct., 1863,
[SEAL.] WM. D. JONES, *Notary Public*, 74 *Wall.*

U. S. district court.

CHESTER W. CHAPIN and *al.*
vs.
THE PROPELLER HYPODAME, her engine, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George E. Willard, a witness produced and examined *de bene esse* on the part of the libellants, being duly sworn, deposes and says: I am over thirty years old; I reside in Clinton, Connecticut; I am now attached to the schooner Milton Badger, lying in this port, and expect to leave in her very shortly on a voyage to Georgetown. I was on board of the Chester W. Chapin at the time of the collision
59 between her and the propeller Hypodame, which occurred on night of the 1st Dec., 1862, on the Hudson river, a little below Peekskill; I was on deck at the time; I had been on deck from ten o'clock p. m. of the evening before, until the collision, which occurred before daylight, and I should think about four o'clock a. m.; the captain and mate were also on deck; the captain was at the wheel; I was on the lookout; I stood on the starboard side, away forward on the lumber; the lumber was piled up even with the rail, and I stood on the top of the lumber; had all her sails set except the main-topmast stay-sail; it was a kind of a misty night; I should judge you could see a vessel without a light a half a mile; could see both shores so as to see the make of the land; I should judge that the propeller was a half a mile off when I first saw her; she bore about a point on *on* our larboard bow when I first saw her; she was coming up the river; she did not appear to be coming directly towards us when I first saw her; she would have passed us to the eastward on the course she was then on; I think that course would have carried her half a mile to the eastward of the schooner; I don't know how wide the river is at that place; the schooner was heading for Caldwell for anchoring; we intended to come to to anchor if we could get there; there was no wind; I heard the propeller blow her whistle; I did not understand the whistles; I don't know anything about them; I should judge the propeller was about half a mile off at the time I heard her whistle; the captain was at the wheel and the mate was on deck; his name is
60 Edwin Stevens. I don't know whether or not the captain had seen the propeller before the whistle. After the whistle, it

was not long before I observed that she was coming into us. I did not report this; I was so frightened that I hallooed. I should say she was not more than five of the schooner's lengths off when I saw that she was coming into us. I don't know whether the others hallooed or not. I hallooed all the time as loud as I could. I think I could have been heard across the river. The propeller came right on to us in full headway; I don't know how fast she was coming. She struck us on the larboard bow, right by the cat-head. She came along inside the bowsprit and shot into the windlass. We lowered the boat away and left her. There were only three on deck at the time of the collision; the others were called up, and we lowered the boat and rowed off from her a little ways and watched her. The captain then sung out and asked the propeller if they would tow her on to the flats. They told us to go back and get aboard. The propeller backed up and our mate, Stevens, made the propeller's hawser fast to the schooner, and they commenced towing her, and after towing her about four times her length, she went right down head first. We had no signal light set. We had no lantern burning that I know of; we showed a lantern to a steamboat which went down past us while we were in the Race. When I heard the whistle I think those on the propeller could have seen our vessel. The schooner did not change her course after I saw the propeller that I know of.

61 Cross-examined:

Before December, 1862, I had been farming in the summer, and in the fall I shipped with Captain Farnham to go up the river. He was the captain of this schooner. I don't recollect what time in the fall I shipped. I shipped only for that trip, on the return of which the accident happened; I shipped as a hand for that trip only. I don't recollect when we left Albany on that trip. We had lumber on deck; it was piled up even with the rail, which, I should judge, was three feet above the deck. We were on deck as a lookout. I was placed there by the captain as a lookout. I had been on deck on the lookout from ten o'clock till the collision. The vessel had been beating before that. She was on her starboard tack when I first saw the propeller's lights, and she continued on that until the boats came together. The boom of the mainsail was on the starboard side of the schooner when I first saw the propeller. I should judge the schooner had been on that tack half an hour before I saw the propeller. I don't know the names of the points on the river. We were in the upper bend of Peekskill flats when we first went about—the upper bend before I saw the propeller. I think we had been on that tack half an hour before I saw the propeller. We were in about the middle of the river at the time of the collision. I should judge that the river was four miles wide there. I am not accustomed to judge of distances on the water. The signal I heard was a steam whistle. I can't tell how many times it was blowed; I did not notice how many times; I did not know it was meant for a signal; I did not know what it was meant for; I did not hear the blast from any other steamboat about that time;

62 I did not see the propeller before I heard the blast of the steam-whistle. It was this blast that called my attention to

the propeller. I saw one light at the propeller's bow. I did not see any lights aft, nor any light on either side, green or red. I should judge the propeller was about five lengths of our schooner off when I first saw her, and then I hallooed: I said, "Where are you coming," and the next thing we came together—I can't tell how soon—but immediately. I was standing at the time forward by the foremast on the deck load. After I saw she was coming into us, I stepped back about midships. This was not as soon as I hallooed, but when I saw she was coming into us. I can't tell what the captain was doing, but he was aft at the wheel. He had been there from ten o'clock until the time of the accident. The mate was forward on the deck load with me; I can't say that he was as far forward as I was. He had been there from ten until four. There was another man who was a hand before the mast and a boy cook; they were below; they turned in at ten o'clock. I can't say they were called; they came up when the collision happened. There was no light shown to the propeller that I know of. I did not go in the schooner to where she was towed; I was in the boat, which was attached to her quarter. I saw the next day the place where I thought she sunk; she drifted up the river. The lumber kept her up. We saw her drifting up. I saw her drifting up when we rowed up the river to find her, which was the next morning. After the boat first sunk, we went ashore at Cald-
63 well in the small boat, and we staid there until daylight. We rowed from the place where the boat sunk to Caldwell. We rowed right straight across to Caldwell. As near as I can judge, the place where the boat first sunk would be right opposite Caldwell. The place of collision must have been about in the same place of the river where she went down. It was no higher up. It was the very last of the ebb tide.

Redirect:

Q. What do you mean by starboard tack?

A. When we are beating on the river, we have a larboard and starboard tack. When the vessel is going off to the starboard, that I call the starboard tack.

GEGRGE E. WILLIARD.

Sworn before me this 30th October, 1863.

[SEAL.] AVERY J. BROWN,
Notary Public, City of N. Y.

Indorsed: U. S. district court. Chester W. Chapin *et als. vs.* The Propeller Hypodame. Depositions of Edward C. Stephens and George E. Willard for libellants. Owen, Gray & Owen, lib'ts' proc's.

64 U. S. district court.

CHESTER W. CHAPIN *et al.*
vs.
THE PROPELLER HYPODAME, her engines, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Addison D. Woolsey, being produced and examined as a witness on

the part of the libellants in the above cause, deposes and says that in December, 1862, he was clerk in the employment of G. M. Griffien & Co., merchants in Albany; that that firm shipped the cargo which was on board of the schooner C. W. Chapin at the time of the collision with the Hypodame on her way down the river; that on the afternoon of the first of December, 1862, Captain Du Bois, the master of the propeller called at the store of G. M. Griffien & Co., and stated that the schooner had been sunk just above Peekskill, opposite Caldwell's Point—Kyd's Point. He attempted to tell me how it happened, and he drew in my presence the diagram which is annexed, and he explained it: he said he was coming up the river as represented by the long line, and that he saw a vessel at anchor near the edge of the flats on the east shore; that there was a tow coming down by the
65 two lines, and that he at first intended to steer between the light and the tow coming down; that on approaching nearer, he thought he could not pass between the light and tow without knocking some of the boats on the down tow loose; that he then, as represented by the line, steered nearly directly across the river to pass to the westward of the tow. He made all the marks which are on this paper. He first drew the pale line which represented him as going more directly across the river, and then changed it to the blacker line as the true course, and that as soon as he got upon the course going across the river, he heard voices of some one shouting, and he supposed that it was some one in a small boat; that he then slowed his engine and the next instant his bow light flashed on the sails of the schooner. He said he rung the bell to stop, but immediately struck the schooner. He then stated what he did to save the schooner. Mr. Griffien then came in, and I gave no further attention.

Cross-examined:

I am not a boatman. I have always lived near the river, and know nearly all their rules. I am familiar with them. I know how steamboats give signals by their whistles about passing. Two blasts of the whistle means to pass to the left, and one blast means to go to the
66 right. I have made a verbal statement to a person of what I would testify to, and he wrote it down. I don't think that I looked it over, but he read it off. The letter which has just been shown to me is the letter taken from my statement, and which was read to me: a copy is annexed. We have talked with the owners of the schooner in the Western Transportation Company's office about what the captain had said. I did not have the diagram at the time. I have forgotten whether the diagram was then at our office in Albany or not, but I think it was. I don't know the names of the persons present in the office of the Western Transportation Company at the time referred to except Captain Farnham. It was in their office here and not at Albany. At the time I made the statement contained in the letter, I supposed it to be correct.

ADDISON D. WOOLSEY.

Sworn before me this 5th Nov., 1863.

R. E. STILLWELL, *U. S. Com'r.*

We consent that the foregoing deposition may be read upon the trial of this cause without producing the witness, with the same effect as if called upon the trial.

C. VANSANTVOORD,
Att'y for Cl'm't.

(For diagram alluded to above see original.)

68 George M. Griffien & Co., general commission merchants and agents for vessels to all eastern and southern ports, 111 pier, Albany, N. Y., purchases and sales of flour, grain, and feed promptly and carefully attended to.

Shipped, in good order and condition, by George M. Griffien & Co., on board the sloop called the Eliza, whereof Ward is master for this present voyage, now lying in the port of Albany and bound for Providence, R. I., viz: 40 bbls. flour, being marked and numbered as in the margin, and are to be delivered in like order and well conditioned, (the dangers of the seas and river only excepted,) at the port of Providence, R. I., unto O. M. Cook or assigns, he or they paying freight for said goods 25 c. per b'r'l., with accustomed primage and average.

In witness whereof, the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which bills being accomplished, the others to stand void.

JAMES WARD.

Dated at Albany this 28th day of Nov., 1862.

69 ADDISON WOOLSEY,
Book-keeper at G. M. Griffien's, Albany.

The capt. of the propeller called at our office upon his arrival at Albany, (to report the sch'r C. W. C. as sunk by a collision,) at about 3 o'cl'k p. m., Monday, Dec. 1st, and made the diagram upon the back of the annexed bill of lading; and stated that he was coming up the river and saw a vessel, with a light, at anchor near the edge of the flats on the eastern shore, and also a tow coming down the river, and expected to pass between the tow and the vessel with the light, and to the eastward of the tow, but upon approaching he thought there was not room to pass "without knocking some of the down tow loose," and then he turned his vessel to the westward, or to larboard, to pass the tow on the other side; at that time he had not seen the sch'r C. W. C.; after he turned to the westward he heard some one hail him and slowed, and thought at the time it was some one in a small boat going across the river. The the next thing he saw was the propeller's head-light flashed upon the sails of the sch'r C. W. C., and the next instant he had run into the sch'r, and then he related what he did to help them. He also stated that he was at the wheel himself.

70 Indorsed: U. S. district court. Chester W. Chapin and others *vs.* The Propeller Hypodame. Deposition of A. D. Woolsey taken on the part of the libellants. Nov. 5, 1863.

71 At a stated term of the district court of the United States of America for the southern district of New York held at the

United States court-rooms, in the city of New York, on Wednesday, the ninth day of December, in the year of our Lord one thousand eight hundred and sixty-three. Present, the honorable William D. Shipman, district judge.

CHESTER W. CHAPIN *et als.*
vs.
THE PROPELLER HYPODAME, her tackle, &c.

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellants recover, in this action, against the propeller Hypodame, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, with costs to be taxed, and that it be referred to a commissioner of this court to ascertain and compute the amount of such damages, and report thereon to this court with all convenient speed.

WM. D. SHIPMAN.

72 Indorsed: Vol. 17, No. 453. United States district court for the southern district of New York. Chester W. Chapin *et als. vs.* The Propeller Hypodame, &c. Owen, Gray & Owen, pro. lib'ts; C. Vansantvoord, proctor for cl'm't. Int'y decree for lib'l'ts and order for reference. Filed the ninth day of Dec., 1863.

73 U. S. district court.

CHESTER W. CHAPIN *et als.*
vs.
THE PROPELLER HYPODAME, her tackle, &c.

18 Dec., 1863.—Notice for reference for Dec. 22, 1863.

Dec. 22.—Pursuant to notice parties met and adjourned to to-morrow at 3 p. m.

Dec. 23.—Reference further adjourned to to-morrow, 3 p. m.

Dec. 24.—Reference adj'd to Jan'y 5, 1864, at 1½ o'clock.

Jan. 5, 1864.—Parties present.

Evidence for libellants.

Richard A. Farnham, sworn:

I was captain of sch'r C. W. Chapin, in Nov. and Dec., 1862, on the voyage in which the collision occurred, and one of the libellants in this action. The schooner was built at Madison, Conn., in 1854. The collision was Dec. 1, 1862. The vessel was in first rate order at the time of the collision. Her timbers were sound. She was sound vessel at the time of the collision. Her sails were in good order; they were three years old; had not been used all the time; had been used 18 months. I left Albany Nov. 28, 1862, and bound for Providence, R. I., on the voyage when the collision occurred; cargo con-

74 sisted of 3,557 $\frac{52}{100}$ bushels corn, consigned to Day & Sprague, Providence, R. I; 213 barrels of flour, consigned to Otis M. Cook, Providence; 8,463 feet of black walnut boards, 7,248 feet of

pine boards, consigned to Slocum. The freight on the corn was to be 5½ cents per bushel; on the flour, 25 cents per barrel; the black walnut, $4 50 per 1,000 feet, on the pine, $3 per 1,000 feet freight. The collision took place about 1½ miles from Peekskill, in the Hudson, off the Dunderberg. The injury sustained is as follows :

She was struck on the larboard bow; her bowsprit rigging and jib-boom rigging first gave way; the anchor broken; cat-head crushed in, and rail bulwarks outside and inside (white oak) broke in; plank-sheer broken into, and the water-ways and deck plank, deck beams, and double white-oak knees broken; six streaks of 4-inch plank cut through to a third streak over gurtle keel. The propeller went into the schooner about 6 feet into the deck. The jib-boom guys and bowsprit shrouds were repaired the cheapest way possible. The propeller cut into the bulkhead and broke that away. The water rushed in and the vessel sunk and wet the corn and flour which was under deck. We lost all the furniture on deck; a chest worth
75 $5 dollars containing reef gearing; two draw buckets, $1; hand spikes, 75 c.; pump spear and gear lost, and have them supplied by Mr. Dart. His bill will show. The water and the corn washed into the cabin; I had two marine clocks both destroyed, one $2½, and the other $4; my tarpaulin, worth $6; stove broken—$7 when new, and had been used about 3 months; was sound and in good order when broken. The crockery was worth $8, $5 worth destroyed; two globe lanterns, $5; two lamps, 50 c.; two compasses, one, $4, the other, $3 50; bedding all ruined; bed clothing, six berths, one feather bed weighing about 20 lbs., pillow for each bed, all worth about $20; carpet worth $6; it was torn all to pieces; two armchairs broken, $2 50; six stools, worth $3; table cost me $1 to get repaired; 7 charts, worth $20, destroyed; quadrant repaired cost me $2; spyglass repaired, $1; Epitome, $4; Coast Pilot, $3; buoy-book and light-house books worth 50 cts.; scale divider, $1 25. All of the articles above mentioned were injured or destroyed. All the ship's stores destroyed—two quarters of beef, $10; 50 lbs. pork, $4;
76 all the bread, flour, and other stores, $15. After the collision took place the propeller threw a line to us and attempted to tow us, but there was so much water in the schooner that she (propeller) could not tow us. She sank 50 feet forward and 25 feet aft. The lumber rose and cramped up under her rigging, and lifted so hard on the starboard that it drew channels of the three-inch rails, and split the chains out, injuring the rails, and lifted the house off cabin on the larboard side. The line was run out when it was found she couldn't tow us. Schooner then floated about 3 miles. Before the schooner landed I employed two men to go and assist me. The two men were Ten Eyck's. These two men assisted me in rescuing the vessel, and I paid them $8 without any receipt. We got some lines from another vessel and secured her to the shore. I gave an order on Woolsey & Terry, Jersey City, for two lines,
77 and they got the lines, and I paid the bill for them, $36 63, which was paid April 7th, 1863. That is included in Woolsey & Terry's bill. Those lines secured the vessel temporarily.

then got the fore-topsail main-topsail, and mainsail, and stay-sail, and saved them. They were damaged. The other sails we couldn't get off, being attached to the bottom so. I then proceeded to Peekskill and had a protest made that cost me $1, (of Nelson.) I got the sloop "Lark," and the two men and the crew, to help save the lumber. I paid them for their services $25. I paid it by giving my check to Mr. Farote. Receipt put in, marked Ex. A, J. A. O. They worked from 10 a. m. to 10 p. m. I then proceeded to New York to get advice, and gave notice to the owners of vessel and cargo. I telegraphed to them, on my way down, the situation of the vessel, which cost me $1 80. The next morning after I arrived in New York, I went to Jersey City and bought two coils rigging, and afterwards bought some other articles, which are mentioned in
78 Woolsey & Terry's bill. The whole amounted to $63 89, exclusive of the $36 63 mentioned above. I paid the bill April 7, 1863. Receipt of Woolsey & Terry put in evidence, marked Exhibit B, J. A. O. The fare to New York and back, $3 07. I went to Garrison's Landing and hired a boat to take me down to the boat, for which I paid 50 c., and secured the boat with this new rigging, and with what I had. I then returned to New York and saw Mr. Allen and the owners of the vessel and cargo, and tried to make arrangements to raise the vessel. We made an agreement with Mr. Babcock; he was to go and get the vessel for $400, and pay me the towage up and down. We got a propeller, "Joe," and towed Babcock's vessels up; we paid the Joe $185 for her services Dec. 6, 1862, and this is the receipt now shown by me, put in evidence and marked Exhibit C, J. A. O. My expenses to New York, Dec. 5, 1862, were $3 37. Babcock made an effort to raise the vessel, but did not raise her, and he gave up the job, and we paid him nothing. We had to pay for the boat Joe whether Babcock
79 raised her or not.

Adjourned to to-morrow at 2 p. m.

Jan'y 6th, 1864.—Mr. Farnham continues:

I came down to New York on the propeller when she returned, and I went up to Mr. Tallmadge, a wrecker, with one of my owners of the vessel and cargo. I made a bargain with him to get the vessel, me to pay the expenses of towing the vessel up. He was to have $800. Tallmadge was to go on Monday morning; this was Saturday night. Mr. Allen, agent of Western Transportation Co., recommended Tallmadge to us. On Monday morning Tallmadge said he could not go, as he had a job he could not get clear of. I then telegraphed to my owners about this. I then went and employed the derrick by consent of the owners of the vessel; made a written contract; one of the owners of the cargo signed it with me. The contract was, that the derrick was to go and get the schooner up and deliver her at New York for $2,000; if after they got her up, and the leak could be stopped there, they were to have $1,900. I went back then to the vessel. My expenses for passage, &c., was $3 38.
80 After I got back I found a little lumber that was picked up, for which I paid $3 75. I bought sail-cloth about the 10 Dec.,

1862, of Wernham & Kenzel, for the use of the vessel, which cost me $6. I paid them $5 for storage and cartage and drying these sails. (Receipt in evidence, marked D, J. A. O.) The derrick arrived at the vessel on the 11th Dec., and raised the vessel. We found that we couldn't repair the leak there, and the derrick brought her down to New York. They started for Hunter's Point, but we couldn't get her there because the boilers were out of repair. After a consultation we took her in the mouth of Bushwick creek. I did not pay that derrick co. for that service. Charles H. Northam paid the company. That bill was paid the 23 of Dec., 1862.

Receipt shown witness: I presume that is the receipt put in evidence, marked E, J. A. O. Before I left Peekskill, I paid Mr. Isaac Fauroat for board of myself and crew and two of the owners, $20.

(All items of board obj. to.)

81 Receipt shown to witness: That is the receipt of Isaac Fauroat, dated Dec. 11, 1862, put in evidence, marked Ex. F., J. A. O. I came down on the derrick to Sing Sing; there took the cars to Hunter's Point; the expenses were $1,681. The vessel was taken in Bushwick creek; we lifted her and hove her and got a lighter alongside of her, and began to discharge cargo. The water was even with the decks in the hold. I purchased two hoes, cost $1 50; six scoop shovels, cost $4 00. We completed discharging cargo; it took 4 days to discharge cargo; commenced Saturday eve, and finished Wednesday; I employed men to discharge this cargo; I paid $75 for extra labor. The crew were hired by the month, from the 5 of Dec. to the 22d Dec.; I paid the crew $66 92. The men had been employed in and about the vessel up to the 22d Dec'r. The crew was employed in discharging the cargo to the 18th; after that they were employed in fitting the vessel. I paid $13 78 for board of myself and crew from the time I came to Bushwick up to the 22d. (Obj. to.) Before the cargo was discharged I employed Mr. Bloomfield and his carpenters to make some repairs to keep the water out while we were discharging. I paid them $10. (Receipt put in evidence, marked Ex. G, J. A. O.) The derrick had fulfilled her contract, and unless we had employed this carpenter and his men the derrick

82 would have to have been kept another day. After the cargo was discharged, I found that the vessel was strained—had been logged. The swelling of the corn had raised the deck up 8 inches, had broken 5 beams and drawn bolts down into the head of the beams and lifted them off the trunk. The bulkhead of the cabin was gone; the cabin door gone, and floor lifted up, &c. Mr. Bloomfield examined the vessel and said he could put her in repair for $1,800. I sent for Nettleton, of Fair Haven, and he came down and looked at the vessel, and he thought the vessel could be repaired for $1,500 if the vessel was taken up to Fair Haven. Mr. Bloomfield is a shipbuilder at Greenpoint. I and the owners thought we could get the vessel repaired the cheaper at Fair Haven. I sent to Clinton and had two men come down to help get the vessel up there. I paid one for his expenses coming down and his wages while employed, $6 65; I paid

the same to the other, $6 65. I sent for the men at Clinton, because it was cheaper than to have employed men here. I took the vessel to Nettleton's yard, Fair Haven. From the time the vessel was discharged to the time I got to Fair Haven, I charged the owners for my services $10. At Fair Haven Mr. Nettleton did the carpenter work; he furnished all the materials for the carpenter and
83 joiner work, Nettleton did, and furnished everything; that is in the bill now shown me; the amount of said bill is $753. It was paid March 12, 1863. I was present every working day that the repair were being made. (Bill put in evidence, marked Ex. H, J. A. O.) Nothing was done but what was rendered necessary by the collision I went to Mr. Hotchkiss to procure all the articles mentioned in the bill now shown me. That bill was paid the 17th Feb'y, 1863. (Put in evidence, marked Ex. I, J. A. O.) All the articles were rendered necessary. I emyloyed Hugh Landon to do a part of the blacksmith bill; his bill was $3 74. (Bill put in evidence, marked Ex. K, J. A. O.) John A. Bush, another blacksmith, I paid $1 87 for blacksmithing. (Put in evidence, marked Ex. L., J. A. O.) I paid Y. S. Brown $3 47 for services mending the anchor. (Put in evidence, marked Ex. M, J. A. O.) I paid Mr. Treblee $2 for repairs on the rigging; I and the two boys put in the bowsprit and set up the rigging; these boys I paid $15 per month. All the repairs were not completed at Fair Haven; the reason was that I could not get men as cheap as at Clinton, and I took the vessel to Clinton about the 15th of February. At Clinton I engaged 4 calkers at $2 a day and board; they were engaged 19 days; I paid them $38
84 and $9 for board. Paid March 5, 1863. (Ex. N, J. A. O.) I bought some rosin and oil at Clinton, which cost me $3 64. Paid Feb'y 7, 1863. (Ex. O, J. A. O.) The expense of taking the vessel from Fair Haven to Clinton was $11 60. I paid Mr. Dork, blockmaker, $6 25. (Ex. P, J. A. O.) I paid for two water casks, $5. (Ex. Q, J. A. O.) Geo. Elliott's bill, $4 88. (Ex. R, J. A. O.) Jno. Wellman, $6. (Ex. S. J. A. O.) L. Hull & Son, $20 05. (Ex. T, J. A. O.) All thess bills were rendered necessary for repairing and replacing. I was employed from the 9th of January up to the middle of March; I charged 50 days' labor $1 a day, and my board $17 50, making in all $67 50. (Receipt put in evidence, marked Ex. U, J. A. O.) When I got to Fair Haven I got off the rest of the sails, which were full of mud and dirt; these sails had been under water until the vessel was raised. The damage done to the sails by reason of the collision was $250. They never can be repaired so as to be as good as before. Werman & Kenzel, sailmakers, saw the sails. The standing rigging was injured—was chafed; the lanyards were chafed; the whole rigging was under water; one of the aftershrouds was badly cut and badly chafed. These damages could not be repaid.

Q. What, in your opinion, was the amount of the damage to the standing rigging?

(Obj. to.)

85 A. Fifty dollars.

The repairs were completed about the 15th or 20th of March. From the 9th of January to the middle of March, the work was done as rapidly as could be done, taking the weather into consideration; the delay was two days going from Bushwick bay to Fair Haven and from there to Clinton. The voyage on which the collision occurred commenced at Providence to go to Albany, and back to Providence; went light to Albany from Providence; I have been on that voyage before and since the collision. The average time from Providence to Albany and back, 15 to 20 days. Had it not been for the collision I would have arrived at Providence about 5th of Dec., 1862, and discharged the cargo. The expenses on a voyage of a vessel of that size would have been $100; I think the expense up to the time of the collision was about $80. There was an opportunity to employ the vessel from the time of collision until repairs were completed. (Obj. to.) I had an application to come to Virginia for oysters. That offer was from the agent of the West Haven Comp'y at Oyster Point, and had a similar offer from Perth Amboy. These offers were made while I was at Green Point or Bushwick. This vessel has been employed every year from the time she was built. The freight in Dec., 1862, was 15 to 18 cents per bushel for oysters on a
86 voyage to Va. and back. My vessel was in the habit of bringing 3,300 bushels; the usual expenses there and back was $130 or 140 per trip. In the winter time from 14 to 21 days for the trip there and back. From the middle of December to the middle of March I could have made two trips. From the 5th of December to the middle of March I could have put this vessel into the government employ. There were standing offers at N. Y. and Saybrook for vessels of this size to go into the employ of the government, at the rate of $4 per month per ton. The C. W. Chapin was of 121 tons. The expenses of the vessel per month would be $150 per month. I had an application from Elton, a government agent at Saybrook, about one year ago; I can't say where; I saw Mr. Elton two or three times about chartering my vessel to the government. I have run this vessel ever since she was built, up to the time of the collision.

Adjourned to Thursday, 9½ a. m.

Jan'y 7, 1864.—Parties present. Mr. Farnham continues:

The condition of the flour, corn, and lumber, when it was put on board, was in first-rate order, so far as I know.

87 Cross-ex. by Mr. Van Santvoord:

I am one of the owners; was before and at the time of collision; I am quite sure that the timbers were sound where the schooner was hit. I don't account that there was any left on the propeller. The cut was clean, sharp cut into the schooner. I have been master of a sailing vessel 25 years. A suit of sails on a schooner engaged in the coasting trade would last eight years. It would depend how we use them. Eight years is pretty long time. These sails were cotton duck. The original cost of these sails I can't say. They were bought in New York of Wernver & Kenzel. At the time or before the

collision, I was intending to come to anchor with a view to start again at the next tide, the next morning at 10 o'clock. Assuming that I started from Albany on the 28th, and starting the next morning, it would have been the 5 day. The distance from Caldwell's to Providence is about 247 miles. The greatest distance of the voyage from Albany to Providence had yet to be performed. As the wind was that night and the next day, I could have run to Providence in 24 hours. The flour was taken on board first. It was stowed amidships in the hold, clear up to the decks; the corn was in the hold, run in, and closed in the flour. The corn was put aboard by John Taylor's
elevator. I didn't measure or keep tally of the corn as it went
88 aboard, and all I know about it is from the certificate of the
weighmaster. I counted the number of barrels of flour that went aboard. I could'nt tell the brand of the flour or the quality of the flour. After the boat was brought down to New York, I don't know what became of the flour other than that it was discharged on a lighter. It was discharged on Lane & Phillips's boat. I counted the barrels when discharged, and the number corresponded with the number put on board. The flour was consigned to Otis Cook, Providence. The corn was discharged on three different lighters at Bushwick. Don't know the lighters. They were ordered by Mr. Lane. The boats that were sent were sent by Mr. Lane, the agent of the owners of the cargo. All of the flour and all of the corn that was worth saving was put on board these lighters. I didn't measure the lumber that was put aboard. I did not tally it on. I don't know how much lumber, except from bills of lading. The lumber was consigned to Mr. Slocum, of Providence. The lumber was landed at Fort Montgomery, on the wharf, in care of Mr. Fauroat. The lumber was reshipped from Fort Montgomery to Providence, by some other vessel. After the collision I went ashore at Caldwell's. I staid there an hour, took breakfast, and then went after the vessel with the
two men whom I hired of Ten Eyck; she was then drifting up
89 the river, had drifted two miles. I got to her just as she got
to Fauroat's wharf; she had grounded. Then I got the lines to secure her to the shore; that is the line I gave an order on Woolsey & Terry for. Afterwards I got two coils of rigging of Woolsey & Terry, which were also used to secure the vessel to the shore, the same which I mentioned in my direct. One coil was used to replace the rigging which was cut, the other remains on the vessel, and the lines I got from the main vessel are also on the vessel. These lines are not worth as much now as then; the lines from the vessel were more than half worn. Can't say how much less they are worth than at the time I got them. I can't tell whether the 280 manilla or 199 manilla in bill of Woolsey & Terry (Ex. B, J. A. O.) was used up in repairs. Mr. Babcock resided in Jersey City. I was not acquainted with him, was recommended to him. I saw him myself, and I and Mr. Northam made arrangements with Babcock to go and get the vessel up. Mr. Northam had the writing. The purport of the contract was, Babcock was to raise the vessel for $400, we paying the expense of towing the vessel up and down. This was Babcock's proposition and

I assented to it. I think it was Friday morning we went up. Babcock made an effort to raise the schooner, but gave it up. Babcock got his spars across and his chains made fast, but he thought the vessel too heavy; he gave it up and went home. The question was asked him what time he thought it would require to get the vessel up and get her to N. Y. He answered by Sunday night. This was on Thursday when he made the bargain. Mr. Northam thought it was pretty reasonable, and concluded we would give him $100
90 *dollars* additional as a present, if he could get it to New York by Monday night. That was all that was said, except his proposition before stated. The minute that was made was taken down by Mr. Northam and kept by him. I made the bargain with the derrick company. The reason I came to pay the derrick company more than Tallmade was, I thought the derrick company a sure thing, and I could not do better. The schooner was in no worse position to raise on account of the delay of Babcock and default of Tallmadge, except the weather was growing colder and the ice running. Tallmadge was to have got up as soon as he could. The boilers at Hunter's Point which were out of order were connected with the Marine Railway. Bushwick creek from Hunter's Point is about ¾ of a mile. The scoop shovels were principally split to pieces. One of the hoes is safe, the other I don't know what has become of it. Five men, including myself, were on my vessel when I started from Providence. They were hired by the month—three of the men had been with me two or three months. I paid mate $25 per month; the other three were hired from $16 to 20 per month when the bargain was made; they were hired at so much a month, nothing said that they were to quit. Edward Stephens was the mate's name. He left on the
91 19th Dec., 1862. Don't know when their month began or ended.

Q. Can you tell now how much of the time of the men up to the 22 Dec., 1862, was included within the running of the last month?

A. I can't tell.

Clinton is 25 miles east of New Haven. I sailed the vessel on shares, and the amount of my compensation depended on the earnings of the vessel. I owned ⅛ of the vessel, but was running her, viz: that I was to have ½ of the earnings and pay ½ of the expenses. The damage of $250 to the sails is to the wear and tear and chafing of the sails, over and beyond the cleaning them up. The sails are now used and I have used them for a year, and I consider them pretty good yet. I can't say but what they are good for 3 or 4 years yet. I don't think they would be good for 5 years. The ropes have got to be replaced now; they are rotten. I based the damage of the lanyards and rigging on the ground of their being chafed, and by the soaking in the water forced the tar out, and they were cut by ice, and the sails were cut by ice. This rigging is exposed to the weather; how much shorter lived it would be by reason of this collision I can't say. The presumption is that the sails would not last by a year or two as long, if they had been injured by the collision. The
92 Chapin was not on the ways at Bushwick creek, nor at Fair

Haven, nor at Clinton; was not on ways until after the repairs were made. Didn't go on the ways at all on account of the collision. When I say that the expenses would have been $100 from Providence to Albany and back, viz., victualling and incurring towage and dockage, it depends upon circumstances, however. I think my vessel could have been chartered to the government between the 5th of Dec. and the middle of March. The government were employing vessels of that class in carrying stores to Washington, Georgetown, and she was fitted for that service.

Re-direct :

About $24 was extra pay to the crew from the 2d to the 22d of December, and that is included in the bill of $66 92. The injury to the sails is as follows : by dragging them over the rocks on the shore, and having to take them wet to Jersey City, and the natural wear and tear of carting. The sails were saturated through with mud, dirt, and wet. The ropes were of manilla hemp, and would naturally rot by lying in the water, and I think the cotton, by lying in the water and sediment, weakens the strength of the cloth. In speaking of the carting to Jersey City, applies only to those sails that were taken off at Fort Montgomery; the others were under water a still longer time;
when they were under water they were swinging with the
93 tide, chafing ag'st the rigging, and ice running through
them. The rigging replaced was running rigging. The ropes I borrowed at Fort Montgomery were worth $25. It was half worn out. The rope which was bought and left over and was injured, can't say how much it was worth in value. The two coils of rope which I bought of Woolsey & Terry, the one of 280 cost $35, and the one of 199, $24 87. Before I employed the derrick, I tried to employ other companies' besides Babcock & Talmadge. A company in Wall street said that they would get her up for 2,500 and bring her down. The derrick was employed from Tuesday, 6 o'clock, eve, till Monday—their price was $400 per day, we paying the towage. The propeller "Joe" was to tow up Mr. Babcock's vessel and tow down the Chapin. We employed them by the hour. The condition of the corn not worth saving was that they lay in the river some 14 days; could not tell which was the most, mud or corn. The corn was. There was about 50 or 75 bushels of corn so spoiled and not worth saving. We had performed the best half of the voyage from Albany to Providence at the time of the collision.

Adjourned sine die.

May 9th, 1864.—Parties present. The proctors for libellant offer
in evidence the depositions of Richard A. Farnham, Charles H.
94 Northam, John H. Bloomfield, Warren O. Nettleton, Wm. H.
Kenzel, Otis M. Cook, E. P. Durant, Walter Grenough, Daniel E. Day; certificate of Charles Wesner; affidavits of Geo. M. and Wm. P. Griffin; dep's of Gorham F. Baker, Stephen K. Lane, Henry W. Slocum and Joshua Rathburn.

Libellants rest the case.

Adjourned to Friday, May 13th, at 10 a. m.

Friday, May 13th, adjourned to Saturday, May 21st, 1864, at 10 a. m.

Saturday, May 21, 1864, adjourned to May 28th, at 10 a. m.

May 28th, 1864, adjourned to May 30th, 1864, at 2 p. m.

May 30th, 1864, parties, proctors present.

Adjourned to Tuesday, May 31, 1864, at 2 p. m.

May 31st, 1864.

Evidence for claimants.

Silas C. Evans, sworn, says:

In December, 1862, January, February, March, 1863, my business was commission merchant and ship-broker in this city. The name of firm "N. N. McCready & Co." We chartered vessels to the government, a great many of them, during the fall of '62 and winter 1863. Schooners of 121 tons were not then in demand by the government. Vessels of two hundred tons and upwards were in demand. The government didn't employ one out of a hundred of vessels of 120 tons.

95 The government employed vessels $4 per register ton per month at the risk of the government, so far as war risk is concerned. All other risks were at the risks of owners, and at the expense of the owners of the vessel while they were run—their employment was not hazardous.

Cross-ex'd:

There were no established rates by private parties for chartering vessels. I think we own one vessel of the size of 121 tons; she is now unnder charter to the government; we did not try to charter that vessel in the fall of '62 and in winter of '63; she has been in the charter of the government about six months. I can't recollect that the government refused to charter vessels of 121 tons in Dec. '62, Jan'y, Feb'y, March, 1863. Generally they have declined for the last three years to charter vessels of that size; I can't say that there have been exceptions to that rule; our vessel of about 121 tons was chartered for a special service by the government; we chartered vessels to the government other than those we owned. The government employ vessels to carry freights or cargo to certain points south, at rates of freight, and in such cases 5 or 6 days are allowed to discharge the vessel's cargo; after such time had elapsed the government paid demurrage at the rate of 12½ cents per register ton per day.

Evidence closed.

Adjourned to Saturday, June 4th, at 9 a. m.

June 4th, 1864.—Case closed.

96 Indorsed: U. S. district court. Chester W. Chapin and others *vs.* The Propeller Hypodame, &c.; testimony in reference. Owen, Gray & Owen for l'b'ts; C. Van Santvoord for cl'm't.

97 Ex. A, J. A. O.

Received from Isaac Faurot, for Capt. Richard A. Farnham,

twenty-five dollars, in full for my services in taking lumber from schooner C. W. Chapin.

January 19th, 1863.

THEODORE KEMP.

Ex. B, J. A. O.

JERSEY CITY, *Ap'l* 1, 1863.

Sch'r C. W. Chapin, bo't of Woolsey & Terry.

1862.		
May 14.	1 lead line, 10*s*	$1 25
Dec. 2.	1 coil manilla, 293 lbs., 1*s*	36 63
	280 manilla, 1*s*., 199 manilla, 1*s*	59 87
	1 s. new twine, 2*s*., 2 brooms, 20 c	65
4.	2 pails, 2*s*. 9, 1 ppr. tacks, 12 c., 2 lbs. cut nails, 6 c.	74
26.	Manilla, 1*s*	1 38
		100 52

Ex. C, J. A. O.

NEW YORK, *Dec.* 6, 1862.

Sch'r C. W. Chapin to Propeller Joe:

To towing 37 hours and services, at $5 ..... $185 00

Rec'd payment,

ALVAH C. NICKERSON.

Ex. C, J. A. O.

JERSEY CITY, *Dec.* 10, 1862.

Sch'r C. W. Chapin, Capt. Farnham, bo't of Wernham & Kenzel.

One lot of old duck	$6 00
To cartage, labor on sails, drying and storage	5 00
	11 00

98 Ex. E, J. A. O.

NEW YORK, *Dec.* 14, 1862.

Sch'r C. W. Chapin to the Derrick Company:

To services rendered, hoisting and transporting vessel and cargo from the vicinity of Fort Montgomery to Long Island $2,000 00

Rec'd payment.

WM. H. PHILBROOK, *for the Co.*

Dec. 23, '62.

Ex. F, J. A. O.

Sch'r C. W. Chapin to Isaac Faurot:

To board of hands of schooner, 3 in number, 31 meals, at $3 50 p'r week $15 50

To 9 meals,	Capt. Farnham		$1 50
2 do	Mr. Sparge		50
4 do	Mr. Day		1 00
4 do	Mr. Elliott		1 00
			19 50

Buttermilk Falls, N. Y., Dec. 11th, 1862.
Rec'd payment.

ISAAC FAUROT.

Ex. G, J. A. O.

GREENPOINT, *Dec.* 27, 1862.

Rec'd from the captain of the C. W. Chapin, schooner, for labor and materials used on Sunday, ten dollars.
$10. BLOOMFIELD & CO.

99 Ex. H, J. A. O.

FAIR HAVEN, *Feb.* 18, 1863.

Sch'r C. W. Chapin to W. O. Nettleton:

To 1,762 ft. mat. white oak, 5 c		$88 10
487 ft., 2d quality, 3½ c		17 04
376½ lbs. iron, 5 c		18 82
58 wedges, 4 c		2 32
764 ft. chestnut beams, &c., 3½ c		26 74
11½ lbs. clinch rings, 16 c		1 84
35 lbs. iron spike, 7 c		2 45
141 lbs. galvanized spike, 10 c		14 10
4 5-inch knees, $2		8 00
bill of docking, wh'ft, and cartage		18 75
36 ft. moulding, 2 c		72
72 ft. b'ds, 2½ c		1 90
235 locust treenails, 2¼ c		5 28
Lewis & Butcher's bill of stuff		19 87
bung and wedges		2 00
stick for cat-head		3 50
79 c. ft. kelson, 45 c		35 55
Broughten & Clark's bill, land run		3 69
19 days' joiner work, $2 25		42 75
1½ hours' calking		40
157¼ days' work, at $2 75		432 43
Holliday's bill calking		3 75
hawse pipe		3 00
		753 00

Rec'd payment.
March 12, '63. W. O. NETTLETON.

100 Ex. I, J. A. O.

Sch'r C. W. Chapin to Hotchkiss & Co.:

1863.

Feb. 4.	To 2 leathern , ⅔	$0 75
	200 navy oakum, 10	22 00
	25 whitelead, 10	2 50
	1 gal. lin. oil	1 40
	1 boat-hook	50
	1 paper Edden l. black	35
	4 whiting	20
	1 oil can	37
	1 paper copper tacks	75
	2 [Illegible]	40
	1½ lining stuff, 18c	27
	23½ sheet lead 12½	2 94
	2 litharge	25
		30 68
	By less can	37

Rec'd payment.

HOTCHKISS & CO.

Feb. 14.	Japan varnish	31
		30 62

Mr. Hamen, 17 Feb'y, 1863.

Ex. K, J. A. O.

FAIR HAVEN, *Feb'y* 18, 1863.

Sch'r C. W. Chapin to Hugh Landon:

Jan. 27.	To 4 doz. of nails	$0 40
	iron pump box	37
	do hook	1 12
	cat-head band	60
	rep., &c., bolts, m'g belts	1 25
		3 74

Rec'd payment.

KELTON & LANDON.

101 Ex. L, J. A. O.

NEW HAVEN, *Feb.* 27, 1863.

Sch'r C. W. Chapin, Dr.:

To strap in deadeyes, lengthen. bolts, &c $1 87

Rec'd payment.

JOHN A. BUSH.

Ex. M, J. A. O.

CLINTON, *March* 20, 1863.

Sch'r C. W. Chapin to Y. S. Brown:

Smithwork caused by collision:

To mending anchor stock	$2 00
making eye-bolts, hooks, thimbles, staples	1 47
	3 47

Rec'd payment.

S. U. BROWN.

Ex. N, J. A. O.

CLINTON, *March* 5, 1863.

Sch'r C. W. Chapin to Mr. Richard Bushnell:

To 19 days' calking, at $2 p'r day	$38 00
board for same	9 00
	47 00

Rec'd payment.

RICH'D BUSHNELL.

Ex. O, J. A. O.

FEB. 7, 1863.

Sch'r C. W. Chapin, bo't of N. & E. W. Wellman:

To 113½ lbs. rosin, at 2½	$2 84
1 gal. oil	80
	3 64

Paid.

N. & E. W. WELLMAN.

Clinton, Feb'y 7, 1863.

102 Ex. P, J. A. O.

CLINTON, *March* 21*st*, 1863.

Sch'r C. W. Chapin to H. L. Dart:

To repairs by collision:

To one cat-head sheave	$0 50
24 belaying pins	1 50
2 8-inch block, boom tackle	2 00
pump-gear and fixings	2 00
1 fore-topmast truck	25
	6 25

Rec'd pay't.

HIRAM L. DART.

Ex. Q, J. A. O.

S. C. Chapin bo't of E. Budington:

2 hunt $5 00

Rec'd pay't. E. BUDINGTON.
Feb. 18, 1863.

Ex. R, J. A. O.

Sch'r C. W. Chapin bo't of Geo. E. Elliott:

1863.

Feb. 26.	1 gal. oil	$1 75
Mar. 16.	1 do.	1 75
	1 litharge	13
		3 63
	1 saw	1 25
		4 88

Rec'd payment. GEO. E. ELLIOTT.

103 Ex. S, J. A. O.

CLINTON, *March* 26, 1863.

Sch'r C. W. Chapin to John Wellman:

To labor painting, 4 days $6 00

Rec'd pay't. JOHN WELLMAN.

Ex. T, J. A. O.

CLINTON, , 1861.

Sch'r C. W. Chapin bo't of Hull & Son:

1863.

Mar. 13.	Moulding for cabin	$1 39
	Brush	25
	43 manilla	8 17
	1½ yarns	30
	51 manilla	9 94
		20 05

Rec'd payment. L. HULL & SON.

Ex. U, J. A. O.

CLINTON, *March* 25, 1863.

Sch'r C. W. Chapin and Owners to R. A. Farnham:

For service of labor and board on schooner C. W. Chapin, while undergoing repairs at Fair Haven and Clinton, from Jan. 9th to March 15th, 1863, fifty days, at $1 37 .. $68 50

Rec'd payment. R. A. FARNHAM.

104 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Richard A. Farnham, being duly sworn and examined as a witness in behalf of the libellants, and in continuation of his former testimony deposes and says:

The $75 08 extra labor which I paid, as mentioned in my former examination, was for persons employed in discharging the cargo and in pumping while the discharge was going on; they were not a part of my crew. We sailed from Providence on the voyage on which the collision occurred on the 14th day of November, 1862; we then had myself and 3 men on board, who composed the crew; on the 16th of November, 1862, I hired another man at Clinton, who shipped on that day. Edwin C. Stevens was the mate; I paid him $25 per month; he remained with me until Dec. 19, 1862. Frank Pratt was one of the crew; I paid him $18 per month: he remained with me until Dec. 30, 1862; after we got the vessel to Fair Haven, George Willard, one of the crew, was paid $18 per month; he remained with me until Dec. 14, 1862. Richard M. Farnham was the cook; he was
105 paid $16 per month, and remained until Dec. 2, 1862. The sum of $24 which I paid them extra, was for watching the vessel and cargo. We commenced the discharge of the cargo with my crew on the evening of December 13, 1862, and it was completed on the evening of December 17th. After the discharge was completed the vessel lay at Bushwick until Dec. 27th. After Dec. 19 I had none of the crew except Pratt. During that time we were engaged in cleaning the mud out of the vessel, overhauling and splicing the running rigging, setting some of the sails, and tinkering a little on the vessel. The two boys from Connecticut arrived a day or so before the 27th of Dec.: I was also engaged in consulting what should be done with the vessel. On the 27th Dec. the vessel sailed for Fair Haven, and arrived there on the 28th. Pratt and the two boys left on the 30th December, but one of them (Edwards) came back again; I cannot tell the date, but it was early in January, and worked with me 5 days; he was employed with me in clearing away the rigging and chains, coming up with the shrouds, taking out the jib-boom and bowsprit, windlass, and other work; I paid him for this $6 65 and board; his board amounted to $2 25. I think Nettleton began his repairs ab't Jan'y 5, 1863, and finished about February 14, 1863; after he finished, it was 4 or 5 days before I got the vessel at the wharf at Clinton, being detained by the ice and snow. The
106 calkers were ready to commence their work when the vessel arrived at the wharf in Clinton, and began as soon as the weather permitted. They did not work every day until they finished the job; they were prevented by the weather from working all the time; I should think there were about 5 days lost by reason of the

weather; some of the days were broken days. They were occupied about 10 days from the time they commenced until they finished; they finished work on March 5th, 1863. If the cargo of corn and flour had arrived at Providence it would have taken about 2 days to have discharged it there, and would have cost about $6 over and above the wages of the crew. There would have been no wharfage to be paid by the vessel. The schooner has run to Virginia for oysters nearly every year since she was built, sometimes one trip, sometimes two, and sometimes 3 trips a year; some of the trips to Nansemond Ridge, near New Port News; also opposite Smithfield, about 9 miles up James river; also up the Rappahannock about 35 miles. Fourteen days is all the time necessary for a trip to Nansemond and back; that is a fair time in the winter. The parties who wanted to charter the vessel in Dec., 1862, wanted me to go to Pocomoke sound, in the eastern shore of Md. It would not take over 15 days for a voyage from New York to that place and back. The applications I have mentioned in my former testimony from Elton, the government agent, to charter my vessel, were before the collision; it was a standing offer.

107 Cross-examined:

I don't know whether the Potomac was frozen over in January and February, 1863, nor how long it continued so, nor how far down below Washington it was frozen. If the Potomac was frozen over we could not go to Georgetown. I have been to Pocomoke in 1862, with the Chapin, early in the spring. I loaded one load of oysters at Little Annimarsick, in March, 1862, and went to the Pocomoke the next trip, about April, 1862. Little Annimarsick is about 10 or 12 miles north of the entrance into Pocomoke sound. I went from Clinton to Baltimore, and from there to Little Annimarsick; can't tell when I left Clinton for Baltimore, but it was early in the spring or latter part of February; arrived at Baltimore about 4 days after I left Clinton; sold my cargo of hay, potatoes and turnips, taking about a week to sell and deliver, and was about 2 days reaching Little Annimarsick, looking along to find where I could find the best oysters. It took 1½ days to get the oysters aboard. I went from there direct to Clinton, and arrived at Clinton in the middle or latter part of Marrh; this is all supposition as to the dates. I have nothing here to fix the dates by; we threw the oysters overboard or planted them as soon as we could; I left Clinton again as soon as I could get ready, but the date I can't fix; I went to Pocomoke sound, and through that to Honga river, between 30 and 50 miles from Pocomoke; we worked up there in about ½ a day with the wind
108 ahead. I got my oysters there and carried them to West Haven, where they were thrown overboard or planted. I can't tell the date of arrival at West Haven; it might have been along the middle of April; I think those were the only trips for oysters in Feb'y, March, or April, 1862. The vessel was employed in some other kind of business during those months, but I don't recollect what, now. I don't recollect whether I made more than 2 trips for oysters in 1861, but I don't think I did; I don't recollect whether I made more than

2 trips for oysters in the previous years; sometimes I made only one. These trips were generally made on charters; I have never made a trip for oysters, to my knowledge, in January and February; it is not unusual to make trips in those months; I know of a large number of vessels which bring oysters to Fair Haven in those months. It is sometimes more profitable to get oysters in January and February than in March and April; I think I have been in February; I have had many applications to go in those months, but preferred not to go then; I prefer not to go outside in January and February; carry a good deal of hay in those months from Clinton to Providence and New York.

Re-direct:

The vessels employed by the government were sent to various places; some to Port Royal, some to Alexandria, Georgetown, and Fortress Monroe. If they are detained by ice or other causes the pay goes on the same as if not detained; they were chartered
109 at the rate of $4 per ton per month for the time they were employed, whether it was for whole months or parts of a month.

R. A. FARNHAM.

Subscribed and sworn to before me, March 10, 1864.

[SEAL] JNO. P. McGOWAN,
Notary Public, New York City.

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller Hypodame, &c. Deposition of Richard A. Farnham for libellants. Owen, Gray & Owen, l'bts' proc's.

110 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles H. Northam, being duly sworn as a witness for the libellants, deposes and says:

I am one of the libellants in this action, and am one of the owners of the schooner C. W. Chapin; I reside at Hartford, Conn.; I first heard of the collision by a telegram from Capt. Farnham, I think, and a letter, asking me to come to New York; I can't tell what day of the month it was; I came to New York, I think, the next day. The captain was at New York when I came; I went with him among the wreckers to get some one to go up and raise her; we went to quite a number, but were unsuccessful in getting any one to engage to go up. The captain was with me; I went back home again about Dec. 6th; I can't tell how many days I was here then. I afterwards, and in a few days, came back again at the request of Capt. Farnham, and we went among the wreckers again; we found a Mr. Babcock, of Jersey City, after seeing a number whom we could not

get to go. The captain and I made a contract with Mr. Babcock to take 2 wrecking vessels and raise the Chapin, and bring her
111 down here, for $400, conditioned that if he did it within a certain day, I think within a week, we were to pay him $500, and we were to furnish him a tug-boat to tow his vessels up and down, also to tow the schooner down if we got her up. If he did not raise the vessel he was to have nothing. That was all the contract. I staid at Jersey City awhile to urge and help get them off, and the next day returned home. After I heard that the vessel had arrived at Bushwick I came to New York again; it was while they were discharging the cargo; I came for the purpose of seeing what could be done to repair the vessel.

Q. What were your expenses on each of your trips to New York? (Objected to.)

A. The first time they were $14 43, the second time was $10 40, and the next time $12 80. I was present at an interview with Mr. Allen; Mr. Allen advised that the flour should be sent to a certain auction house, in Wall Street, to be sold—that is, he said that he should do that if it was his. Mr. Day, the owner of the corn, told Mr. Allen that he proposed to put the corn into the the hands of Lane, Phillips & Lane, and Mr. Allen said they were very good men, or something to that effect. I paid the derrick co. $2,000, and took a receipt for it; this is the receipt, marked Ex. E, J. A. O.

Cross-examined:

112 I am one of the owners of the schooner. The expenses I have mentioned were for fares for travelling, board at hotel, and ferriages, &c. I paid no expenses for raising the vessel, except the derrick co.; I did not perform any personal services, except in engaging Babcock with the captain, and except in going around to the other wreckers, who did not undertake.

(The counsel for the claimant renews his objections to the testimony relative to personal expenses.)

C. H. NORTHAM.

Subscribed and sworn to before me February 5, 1864.
[SEAL.] G. M. TOOKER, *Notary Public.*

We consent that the foregoing deposition be read in evidence, upon the reference in this action before the commissioner, in the same manner and with the like effect as if the same had been duly taken before a commissioner, subject to all legal objections and exceptions.

Dated New York, February 5, 1864.

C. VAN SANTVOORD, *Cl'ts' P.*

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller Hypodame, &c. Deposition of Charles H. Northam for libellants. Owen, Gray & Owen, lb'lts' proc's.

113 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
The PROPELLER HYPODAME, &c.

John H. Bloomfield, being duly sworn on behalf of the libellants, deposes and says :

I reside at Green Point, Long Island, and am one of the firm of Bloomfield & Co. at that place. They are ship-carpenters and also ship-builders; we have built some four vessels, in 1863, of the burden of about 300 tons; I have seen the schooner "C. W. Chapin." I saw her in December, 1862, at Bushwick creek; we put some canvas on and stopped her leak so that she would float. This was before the derrick left her. The captain furnished all the materials, and we did the work, and charged $10, which was paid by the captain. After the cargo was discharged we made an examination of the vessel; I made it personally. We went through the vessel, and saw that some 3 or 4 of her deck beams were broken entirely, and her larboard bow stove in, cut right down to about light water-mark, and cut right through on deck too, and there were other damages. This examination was made for the purpose of giving an estimate of the job, of what it would cost to repair her. We made an estimate of what it would cost to repair the vessel and gave it to Captain Farnham. This is the estimate which I made and gave to him.

114 (Estimate offered in evidence and admitted and marked Ex. I, J. A. C.) I think I told him at the time that I could not do the repairs for any less than that. I think it would have cost $1,800 if done at New York; I think that was a fair and reasonable estimate. It would have taken about one month to have made these repairs. There were not more than 20 out of 30 good working days at that season of the year.

Cross-ex'n :

I did not know anything about the schooner being insured. The estimate was not made out with reference to a claim for insurance or against the steamer. I calculated that the Chapin was good for my bill. I did not get the job. The time it would have taken to have done the job would depend on the number of men. We calculated that we could have done the job with our men in about a month. I don't think we had any job on hand; we may have been building a lighter then; can't tell how many men we then had; we could have put men enough on the vessel to have done it in two weeks, but not at that price; it would have cost $200 or $300 more.

JOHN H. BLOOMFIELD.

Subscribed and sworn to before me, January 26, 1864.

[SEAL.] WM. D. JONES,
Not'y Pub., 74 *Wall St.*

115 We do agree, this Dec. 22d, 1862, by and between Messrs. Bloomfield & Co., shipwrights of Green Point, Brooklyn, L. I., and the master and agent, Mr. R. A. Farnham, of the schooner C. W. Chapin—

To do all the carpentering, calking, joiner's work, taking out the bowsprit, and putting in the place, and hauling out and use of ways, and furnishing materials for the same satisfactory to the Mr. R. A. Farnham, the master of schooner W. C. Chapin, or any competent judges, for the sum of eighteen hundred dollars, painting as the captain or master may deem proper.

BLOOMFIELD & Co.,
Marine Railways, Green Point.

Ex. I, O. G. and O.

I consent that the foregoing deposition be read upon the reference in this action, with the same effect as if duly taken before a commissioner, subject to all legal objections and exceptions.

Dated New York, January 26, 1864.

C. VAN SANTVOORD,
Proc. for Cl't.

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Deposition of John H. Bloomfield for libellants. Owen, Gray & Owen, libellants' proc.

116 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER "HYPODAME," &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Warren O. Nettleton, being duly sworn as a witness for the libellants in the above-entitled action, deposes and says:

I reside at Fair Haven, Connecticut. I was a ship-builder for 5 or 6 years at Fair Haven, until May, 1863. I have also been an owner of interests in vessels, that is, schooners, during the last four years, and have bought and sold interests in vessels. I now own an interest in one vessel. I am acquainted with vessels and their values. In Dec., 1862, I saw the schooner "C. W. Chapin" at Bushwick, and made a partial examination of her injuries to see what I could repair her for. She afterwards came to my yard at Fair Haven; she came there about the 1st to the 5th of January, 1863; I can't remember exactly. I was employed by the owners to make some of the repairs upon her. When she came there she was in the same condition as when I saw her at Bushwick, except that she had been cleaned up a little, and there may have been some corn in her then, but I think only the scattering corn. The schooner had sustained injuries. I can enumerate some of them; she had been struck about the cat-head on the larboard side; the rail and bulwarks had been broken
117 in; also the plank-sheer, wales, and planking; they had been cut all through; her deck was cut into about 6 feet, and her bow-

sprit beam was cut off; the cut was made into the vessel from the deck down to about light water-mark. Her decks had been lifted on the larboard side, and quite a number of beams had been broken off; don't recollect the exact number; her cabin floor was lifted up about 2 inches; we could not get that back again; the doors in the cabin were out of place and the partitions disarranged; there had to be considerable work done in the cabin. The deck beams were lifted from the centre-board, and one of them was split. The bolts in the knees on the port side were started from their places, and I think there were one or two knees broken, and that we put in new ones. The forecastle bulkhead, I think, was broken on the larboard side. She had the appearance of being strained and had been strained pretty badly all over. There was a hole in her larboard bow about 6 feet long, on the deck, fore and aft, and on the side of the vessel some 4 feet, and from the deck down from 3½ to 4 feet, and may be more. The timbers where this hole was made were generally sound; one or two were decayed partially; the timbers of the vessel were generally sound, much more so than I expected to find her from her age. I did some of the repairs on the vessel at Fair Haven; I repaired her sufficiently for her to go to sea, all except calking, and also calking enough to take her to Clinton; I did not do all
118 the calking that was necessary at that time. From the appearance of the timbers they seemed to have been broken off by a blow from something; I should not think they could have been caused by the waves; I did not do any other repairs than to repair the injuries which I have mentioned, and I did all the carpenter's work and all the calking necessary to take the vessel to Clinton. I made out a bill of the repairs I made; this is the bill now shown to me, (marked Ex. H, J. A. O.) In making the repairs I have mentioned I furnished all the materials mentioned in this bill, and also all the labor mentioned in the bill; the materials and labor were all necessary for the repairs I made; the prices charged for materials in the bill were the regular market prices at that time at Fair Haven and New Haven, including cartage, and the prices charged for labor were the regular prices for labor on old work at that time. The bill was paid March 12, 1863. I began the repairs between the 1st and 5th of January, 1863. The repairs were made as fast as it was possible to get them done. They might have been done quicker if we had paid enough for it. They were finished about February 14, 1863. I did not do the painting nor any repairs to the rigging, either standing or running, nor to the sails. In fact, I only did the carpenter's and joiner's work and some little calking. I don't recollect
119 that the standing rigging was injured, except jib-boom guys and martingale guys, which were not in their place, and the place for them was gone. I can't say whether the standing rigging would sustain injury from being under water; I have not seen the schooner since she left Fair Haven at that time. Some of the injuries to the vessel could not be repaired, unless you throughly rebuilt the schooner. Such injuries were not repaired by me.

Q. Can you tell what the injuries were? And if so, what were they? (Objected to.)

A. She was badly strained; fastenings started in a good many places.

Q. Would such injuries diminish the value of the vessel? and if so, how much?

(Objected to as speculative and humbug.)

A. In my opinion it would diminish the value of the vessel by $800; others may think differently. If I was going to buy the vessel I would not give as much for her by that sum.

Cross-examined:

I was not on board or in sight of the Chapin at the time of the collision, nor at the time she was raised. I saw her many times before the collision; I can't recollect the last time; I don't know that there was any collision, nor what injuries were done by it.

Q. Could you tell from the condition of the vessel, or the looks of the timbers, whether she was strained, and how much, by raising her by the derrick?

A. I could not tell anything about it. I first saw her after
120 the collision, some time in December, 1862—about Dec. 25, 1862—and I then estimated the costs of repairing her and making her as good as I supposed she was before the injuries. I assumed that before the injuries she was in first-rate order and sound as vessels of that age. The amount of my estimate was $1,500. The repairs, which Capt. Farnham wanted done did not amount to $1,500; the repairs he asked me to do amounted to the amount of my bill $753. That embraced everything except painting, calking, some blacksmith's work, and there might have been some repairs to the rigging which I don't know. I think I had 8 carpenters and joiners at work in making the repairs charged for in my bill.

Q. Could more men have been advantageously employed in making these repairs, if time had been an object?

A. I should say that more men could not have advantageously worked on her without interfering with each other; it was a small place to work; it could not have been done in a fortnight with as many men as could have worked advantageously without interfering with each other. This is a matter of opinion.

Q. What do you mean when you say that the work might have been done quicker if you paid enough for it.

A. I mean that the men would have worked to a disadvantage, and it would have taken more time, and would have made the bill larger, and I might have had to pay more wages to get men to come at that time. I should judge it would have cost some $200 or $300 more.

W. O. NETTLETON.

121 Subscribed and sworn to before me February 5, 1864.

[SEAL.] WM. D. JONES,
Notary Public, 74 *Wall St.*

We consent that the foregoing deposition be read in evidence upon

the reference *upon the reference* in this action, in the same manner and with the like effect as if the same had been duly taken before a commissioner, subject to all legal objections and exceptions.

Dated New York, February 5th, 1864.

C. VAN SANTVOORD, *Cl'ts' Pr.*

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Deposition of Warren O. Nettleton for libellants. Owen, Gray & Owen, lib'ts' proc's.

122 U. S. district court.

CHESTER W. CHAPIN and o'rs
vs.
THE PROPELLER HYPODAME, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William H. Kenzel, being duly sworn as a witness for the libellants in this action, says:

I reside in Astoria, Long Island; am one of the firm of Wernham & Kenzel, in Jersey City; they are sailmakers, and I have been one for 18 years. I know the schooner "C. W. Chapin" and also Capt. Farnham. We made the mainsail, foresail, jib and flying-jib for the schooner, and also the stay-sail and two topsails; they were sold and delivered to her in March, 1860. I saw them in that May, 1860, when he sent them to us for storage—he took them out again in Sept. or Oct., 1860, I think, and sent them back to us for storage the next summer, and took them out again in the fall of 1861; I don't remember seeing them after that until a few days after the vessel was sunk; they were then pretty badly chafed up, frozen, and muddy; the mud was worked completely through the canvas; they came to us for storage; this was in cold weather and I think was in Jan'y, 1863. We kept them on storage for some 2 mo. or 3 months, or thereabouts; we dried them, but did not have them cleaned. They had been
123 damaged by reason of being wet, chafed, and muddy.

Q. Did such damage affect their value? And if so, to what extent?

(Objected to.)

A. It diminished their value to the extent 20 per cent. on the amount they would otherwise have been worth.

Q. What would have been their value at that time if they had not been so damaged?

(Objected to.)

A. About $1,000; the damage was about $200. If a sail is wet and there is not a good chance to dry it right away it is apt to mildew, and the river mud working through it injures the cotton and also the iron work, and causes the cotton to rot, and affects very much the twine with which they are sewed; causes the rope to get brittle and to lose its elasticity so that it breaks very easily. I did not see the standing rigging after the collision.

Cross-examination:

I don't know whether these sails mildewed or not. On that vessel a suit of sails ought to run from 6 to 7 years; I believe his other suit has lasted 7 years; the usual average is from 3 years to 8 years, according to the size of the vessel and where she goes to. They would last longer on this vessel, because she is a small vessel and ran inside in the winter time, and were made of the very best cotton duck; I can't now tell what the cost of those sails was.

Q. How do you get at the value of the sails at $1,000?

124 I know the number yards that the sails would take, (I am speaking of her three lower sails;) the new canvas was at that time worth about $1 a yard; I consider that the length of time the sails had been worn was about equal to labor and materials to make the sails up, without the canvas. The labor and materials, except the canvas, cost at that time 20 cents a yard. It is impossible to answer how much shorter lived the sails would have been by reason of these injuries, but I think it would have been about 20 per cent.; it would depend on a good many contingencies.

WM. H. KENZEL.

Subscribed and sworn to before me February 5, 1864.

[SEAL.] AVERY F. BROWN,
Notary Public, County of New York.

We consent that the foregoing deposition be read upon the reference in this action before the commissioner, in the same manner and with the like effect as if the same had been duly taken before a commissioner, subject to all legal objections and exceptions.

Dated New York, February 5th, 1864.

C. VAN SANTVORD, *Cl'ts' Pr.*

125 Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Deposition of William H. Kenzel for libellants. Owen, Gray & Owen, lb'ts' proctors.

126 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER "HYPODAME," &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Otis M. Cook, being duly sworn and and examined as a witness for the libellants, deposes and says:

I reside at Providence, Rhode Island; I am a general dealer in grain and flour at Providence, and have been so for about 14 years. I purchased of McKissick & Durant, of Albany, on November 18th, 1862, 498 barrels of flour, known as the "Forrest Mills" flour, at the price of $7 75 per barrel, and 100 barrels flour, known as the "Clarion" flour, at the price of $6 37½ per barrel; I also paid the cartage on the flour at Albany, which was 2½ cents per barrel; I first saw the

flour which was on board the schooner "C. W. Chapin" at some place in the East river, near Brooklyn; I don't recollect the name; they were then discharging the corn and flour; I examined the flour at that time; only a small part of the flour had been discharged at that time; I could see about 50 barrels of the flour; I unheaded about a dozen barrels, which were about one-half damaged in value; they were damaged by being wet; there seemed to be water around the outside; some few of the barrels had their staves broken in and the flour was coming out. None of those which I saw had their
127 heads broken in; the flour was put into the hands of Lane, Phillips & Lane to be taken to auctioneers to be sold; I afterwards received account sales of the flour from Burdett, Jones & Co. I have the account sales here, and herewith produce the same; they are annexed to my deposition and marked Ex. F. H. G. and C. V. S. I also received from them the amount of the net sales $953 94.

Q. Are you acquainted with the market value, at Providence, on and soon after December 5, 1862, of the flour known as "Forrest Mills" flour, double extra, of high grade, and also of the flour known as "Clarion Mills" flour, single extra, of medium grade? And if so, what was it?

(Objected to.)

A. I am well acquainted with the market value at that time, at Providence, of the Forrest Mills, but am not so well acquainted with that of the other brand. The market value at that time, about the 5th of December, 1862, was $8 50 per barrel; I sold some about that time, within ten days from the 5th of Dec'r, and in the last of November, or the first of December, at that price; this sale was at Providence; I did not sell any of the Clarion brand, but I sold other brands which I consider the same quality for from $7 to $7 25 per barrel, about the same time, but it was not a large sale. I don't know of any flour of those brands being sold at New York; I could not find out any receivers of it who had it for sale. I first heard of the
128 injury to the schooner by a despatch from Geo. M. Griffin, of Albany, and afterwards was told of it by Day & Sprague, of Providence. I came to New York after the vessel had been brought here, for the purpose of looking after the flour and of seeing what was to be done with it; I went over and examined it, and went with Mr. Sprague and Mr. Northam to the office of the Transportation Co., and saw their agent there, and consulted with him what we should do; he recommended that the flour be sent to Burdett, Jones & Co., to be sold.

Q. What were your travelling expenses to and from New York, on that occasion?

(Objected to.)

A. Fifteen dollars.

Cross-examined:

These were my personal expenses for coming here to look after my interests. Dealers of flour at Providence mostly buy their flour of the Forrest Mills brand, at Albany; I don't know of any of it being in the

New York market for sale; grain and flour dealers at Providence generally make their purchases in the west, or have done so of late years, and not to any extent in the Albany or New York markets. The ordinary freight on flour from Albany to Providence was 25 cents per barrel in Nov. and Dec., 1862. The freight from New York to Providence was from 12 to 15 cents per barrel at that time. The prices of flour at Providence which I mentioned were determined by the prices which we received at our sales made by me; they in-
129 cluded the freight and profits; I did not that year receive Forrest Mills for sale on consignment. The flour which we sold was flour purchased by us at Albany.

OTIS M. COOK.

Subscribed and sworn to before me, February 10, 1864.
[SEAL.] WM. D. JONES, *Not. Pub.*, 74 *Wall St.*

We consent that the foregoing deposition be read in evidence, on the reference before the commissioner in this cause, with the like effect as if duly taken before a commissioner, subject to all legal objections and exceptions.

Dated New York, February 10, 1864.

C. VAN SANTVOORD,
Proct. for Cl'ts.

130 *Ex. J. H. G., C. V. S.*

Sales at auction by Burdett, Jones & Co., per order and for ac't Messrs. Lane, Phillips & Lane.

111 bbls. Forrest flour, at 5¼, cash		582 75
50 bbls. Clarion flour, at 4⅛, cash		206 25
52 bbls. Clarion flour, at 4, cash		208 00
		997 00
Charges:		
Advert'g and extra	3 75	
Labor 6 39, coops 1 00, bbls. 1 00	8 39	
Port warden's fee, ½	4 99	
War tax, 1/10	1 00	
Comm'r, 2½	25 93	
		43 06
		953 94

E. E.: New York, Dec. 19th, 1862.

BURDETT, JONES & CO.

Indorsed: U.S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Deposition of Otis M. Cook for libellants. Owen, Gray & Owen, l'b'ts' proc's.

131 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, &c.

We consent that the annexed affidavit of Edward P. Durant, sworn to February 3d, 1864, be read in evidence upon the reference in this action before the commissioner, with the same effect as of the said Durant had been personally produced before the commissioner and had given his testimony in this case, in the same words, and had sworn to the same facts as are contained in the said affidavit, subject, however, to all legal objections and exceptions in reference to the relevancy of the said testimony.

Dated New York, February 9, 1864.

C. VAN SANTVOORD, *Proctor for Cl't.*

STATE OF NEW YORK, *Albany city and county, ss:*

Edward P. Durant, of said city, being duly sworn, says: He is one of the firm of McKissick & Durant, who were commission, grain, and produce merchants at the city of Albany, during the year 1862; that on the 27th day of November, 1862, they shipped (as consignors) on board the schooner "C. W. Chapin" of Providence, whereof Farnham was
132 master, then lying in the port of Albany and bound for Providence, R. I., one hundred and thirteen barrels Forrest Mills flour, and one hundred barrels Clarion Mills flour, consiged to Otis M. Cook, Providence, R. I.; that said flour was sold by said McKissick & Durant to said Cook on the 18th day of November, 1862, for $7 75 per barrel for the Forrest Mills and $6 37½ for the Clarion Mills, which was a fair market value for the same on said day of sale; that the same was shipped in good order and condition, the Forrest Mills being double extra of high grade, and the Clarion Mills being of single extra of medium grades; that on the 1st and 4th days of December, 1862, and during the entire month of December, 1862, the fair market value of said flour at Albany was $8 per barrel for the Forrest Mills and $6 50 per barrel for the Clarion Mills.

EDWARD P. DURANT.

Sworn before me this 3d day of February, 1864.

ALLEN B. DURANT, *Comm'r of Deeds.*

Indorsed: U. S. district court. C. W. Chapin. and *al. vs.* The Propeller Hypodame, &c. Testimony of E. P. Durant for libellants. Owen, Gray & Owen, lib'lts' proc's.

133 Sales at auction by Burdett, Jones & Co., per order and for acct. Messrs. Lane, Phillips & Lane.

103 bbls. Forrest flour, 5¼	540 75
6 bbls. Forrest flour, 5¼	31 50
2 bbls. Forrest flour, 5¼	10 50

50 bbls. Clarion flour, $4\frac{1}{8}$		206 25
55 bbls. Clarion flour, 4		208 00
		997 00
Charges:		
Advertsing, extract'n and labor,	12 14	
War tax, $\frac{1}{10}$	1 00	
Port warden's fees, $\frac{1}{2}$	4 99	
Commission, $2\frac{1}{2}$	24 93	
		43 06
		953 94

E. E.: New York, Dec. 19, 1862.

BURDETT, JONES & CO.

134 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Walter Greenough, being duly sworn, says: That in the month of December, 1862, he was one of the firm of Burdett, Jones & Co, auctioneers in the city of New York; that in the said month of December, 1862, the said firm received for sale at public auction from Mess. Lane, Phillips & Lane the flour mentioned in the prefixed account of sales thereof; that the said firm thereupon advertised the said flour for sale in the usual manner and for the usual time, and on the day mentioned in the said advertisement, and at the place therein mentioned, to wit, on the 19th day of December, 1862, at their auction rooms in Wall street, in the city of New York, they duly exposed and sold the said flour at public auction to the highest bidders therefor; that the said sale was well attended by bidders and was fairly and properly conducted, and that the prices bid for the said flour are truly and correctly stated in the foregoing account sales thereof, which were the highest sums bid therefor; that the charges for expenses in the account
135 sales were actually incurred in such sale and are the usual and customary charges and expenses in such cases, and the commissions therein charged are the usual and customary commissions in such cases. That the gross proceeds arising from the said sales were $997, the expenses and commissions thereon were $43 06, and the net proceeds were $953 $\frac{94}{100}$.

WALTER GREENOUGH

Sworn to before me, April 4th, 1864.

[SEAL.] WM. L. TAYLOR, *Notary Public.*

I consent that the foregoing deposition be read in evidence upon the reference before the commissioner in this action, in the same man-

ner and with like effect as if the same had been duly taken before him.

Dated New York, April 4, 1864.

C. VAN SANTVOORD,
Proctor for Cl't.

Indorsed: U. S. district court. Chester W. Chapin and *als.* vs. The Propeller "Hypodame," &c. Testimony of Walter Greenough for l'b'ts. Owen, Gray & Owen, l'b'ts' proc's.

136 U. S. district court.

CHESTER W. CHAPIN and *al.*
vs.
THE PROPELLER HYPODAME, &c.

We consent that the annexed three certificates of Charles Winne, dated Albany, November 26, 1862, November 26, 1862, and November 27, 1862, and also the affidavit of George M. Griffin and William P. Griffin, sworn to February 3, 1864, be read in evidence upon the reference in this action before the commissioner, with the same effect as if the said persons had been respectively personally produced before the commissioner, and had given their testimony in this case in the same words, and had sworn to the same facts as are contained in the said certificates and affidavits, subject, however, to all legal objections and exceptions in reference to the relevancy of the said testimony.

Dated New York, February 9, 1864.

C. VAN SANTVOORD, *Proctor for Cl'ts.*

137 ALBANY, *November* 26, 1862.

Weighed, from the Taylor elevator bins 5 and 7, nineteen hundred and fifty-two $\frac{33}{56}$ bushels corn, ac. W. P. Irwin for G. M. Griffin and Co., and delivered into schooner C. W. Chapin—1,952 $\frac{33}{56}$ bush. corn.

CHARLES WINNE.

Duplicate.

ALBANY, *November* 26, 1862.

Weighed, from the Taylor elevator bin 13, one hundred and sixty-four $\frac{16}{56}$ bushels corn, ac. Lewis & Hinckley and T. D. Bennett for G. M. Griffin & Co., and delivered into schooner C. W. Chapin—164 $\frac{16}{56}$ bush. corn.

CHARLES WINNE.

Duplicate.

ALBANY, *November* 27, 1862.

Weighed, from the Taylor brewery storehouse, fourteen hundred and forty-one $\frac{8}{56}$ bushels corn, ac. Clark & Gifford for G. M. Griffin & Co., and delivered into schooner C. W. Chapin—1,441 $\frac{8}{56}$ bush. corn.

CHAS. WINNE.

Duplicate.

138 STATE OF NEW YORK, *Albany city and county, ss:*

George M. Griffin and William P. Griffin, both of the city of Albany, being severally duly sworn, each for himself deposes and says, that during the year 1862 they were commission, grain, and produce merchants at Albany, comprising the firm of of George M. Griffin & Co.; that on the 27th day of November, 1862. said firm shipped (as consignors) on board the schooner C. W. Chapin, whereof Farnham was master, then lying in the port of Albany and bound for Provdence, R. I., three thousand five hundred and fifty-seven $\frac{5}{6}\frac{7}{0}$ bushels corn, consigned to and owned by Day & Sprague, of Providence, R. I., and to be delivered to them as per bill of lading; that said corn was best prime western high-mixed, well cleaned by hand, and put on board in the best order and condition, and that the market price of said corn at Albany on the 2d, 4th, and 6th days of December, 1862, was 68 cents per bushel.

GEO. M. GRIFFIN.
WM. P. GRIFFIN.

Severally sworn before me this 3d day of February, 1864.
ALLEN B. DURANT, *Comm'r of Deeds.*

Indorsed: U. S. district court. Chester W. Chapin and *al. vs.* The Propeller "Hypodame," &c. Testimony of Charles Winne and Griffin & Co. Owen, Gray & Owen, lib'lts' proc'rs.

139 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER "HYPODAME," &c.

Gorham F. Baker, being duly sworn and examined on behalf of the libellants, says:

I reside in Brooklyn; my place of business is at No. 90 Broad street, New York. I am salesman for Lane, Phillips & Lane, dealers in flour and grain. I have been in that business at New York about 5 years. I am acquainted with grain and the market price thereof at New York. I have seen the schooner C. W. Chapin. I saw her at some place in the East river, near Williamsburg, where she was lying sunk about a year ago. I think it was in December, 1862; she had some corn and flour on board of then. The flour was taken out under direction of Lane, Phillips & Lane and put into a lighter and taken to the foot of Wall street and discharged, and the flour taken up on Wall street to be sold. It was delivered to Burdett, Jones & Co. to be sold, (by Lane, Phillips & Lane.) I know nothing further about what became of the flour. I do not know now what brands the flour was. It was badly wet, and some of it was badly stove; the heads were out of a great many of the barrels; all of the barrels were wet. The corn was put into lighters under the direction of Lane, Phillips & Lane,
140 and delivered to the purchasers. The corn was sold by Lane, Phillips & Lane by sample. I think it was not sold at the exchange, but one load might possibly have been sold there. We took the

samples out of the lighters, and brought them, the samples, to New York. I dug down into into the corn, and took small quantities of it from different parts of the vessel, so that I thought the samples were fair samples of the whole. When I saw the corn in the vessel it was very much swollen, and was wet; it was badly mudded at the top of it, and all that I saw of it at that time. When I saw it in the lighters it did not look so bad; all that was under water was pretty bright and nice, except the swelling, until it was taken out, and then, in a few days, it turned and became black. Nearly all the corn was taken out of the schooner that was in when I saw it, the rest was so badly sanded that we thought it was not worth taking out. There were perhaps 100 bushels all over the vessel that we did not think was worth taking out. The sale was made by the samples I have mentioned, at New York, the same day or the next day after it was taken into the lighters; it was not longer than a day or two; it was sold at private sale. One lighter load of 1,392 $\frac{4}{5}\frac{6}{6}$ bushels, by weight was sold at 25 cents a bushel, and the balance of 1,521 $\frac{2}{5}\frac{0}{6}$ bushels was sold at 18 cents per bushel. That was all the corn was worth;
141 the lighter load of 1,521 bushels was not in as good order as the other load. It was more discolored, and had more dirt and sand in it. Those were the best prices that could have been got for the corn; we did the best we could. These two lighter loads were all the corn that came out of the schooner. The expenses were the hire of the lighter, measuring the grain, commissions in selling—those are all I now recollect. The lighterage on the corn by the lighter "Texas," which was one lighter load, was $112 63, and that on the balance by the lighter "Frank" was $107 97. The measuring and commissions of selling were also included in that bill. I think the commissions for selling were one cent per bushel, the whole of which is paid by the seller. The measuring was one cent a bushel, one-half paid by the buyer and one-half paid by the seller. The amounts above mentioned include only the one-half of the measuring charged to the seller; those are the usual charges for selling and measuring wet grain. We also paid for lightering the flour and for carting. The lightering and carting of the flour were, together, $29 95. The corn was very prime western yellow corn.

Cross-examined:

Providence is a very large market for the purchase of corn; large quantities of corn are sold here to Providence people; they get their corn from New York, Albany, and the south; they for the last year or two get their supplies mostly from New York. Providence is a
142 place for sale of corn for places out of the city; they do not consume $\frac{1}{4}$ of their corn there. The dealers mostly buy it in New York. I was occasionally at the vessel in the discharge of the corn into the lighters. I was there, perhaps, once a day. I think I was there 4 or 5 times during the time, nearly a week, of the discharge. I was there sometimes longer and sometimes shorter, twice nearly $\frac{1}{2}$ a day each time. I don't know of my own knowledge that all the corn which was discharged from the vessel went into these lighters. The corn was offered at the produce exchange. I

think both of the samples were taken there and offered for sale. That is the usual place for selling corn, damaged or undamaged. The corn was sold to McCluskey & Farrell, of New York; they are buyers of damaged corn; they are not distillers. I think they did not buy it at the exchange; they paid considerably more than we were offered for it at the exchange.

Re-direct:

The net proceeds of the corn by the Texas and Frank, after deducting the expenses of lighterage, our commissions, and other charges, was $421 56. Some of the corn was discharged from the vessel into another lighter, whose name I don't recollect; we judged that there were some 400 or 500 bushels so taken out that was lost. I think Mr. Lane sold that lot himself to the Glen Cove Starch Company, to be delivered there; that is some little distance down the sound, through the gate; while on her passage down there, there came up a
143 gale of wind, and the lighter went ashore; the corn was hove overboard to save the lighter. I was not there when this happened. I have been informed that this was the case. I saw the lighter after she was loaded.

Cross-ex'n:

I saw the corn in that lighter; it was not in as good condition as that on the Texas; it was in about the same condition with that in the Frank; don't know what it sold for.

GORHAM F. BAKER.

Subscribed and sworn to before me, January 26, 1864.
[SEAL.] WM. D. JONES,
Notary Public, 74 Wall St.

I consent that the foregoing deposition be read in evidence upon the reference in this action, with the effect as if duly taken before a commissioner, subject to all legal objections and exceptions.
Dated January 26, 1864.

C. VAN SANTVOORD,
Proctor for Cl't.

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller Hypodame, &c. Deposition of Gorham F. Baker for libellants. Owen, Gray & Owen, l'b'ts' proc's.

144 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME.

Stephen K. Lane, being duly sworn and examined as a witness on behalf of the libellants in the above-entitled action, deposes and says:
I am a member of the firm of Lane, Phillips & Lane, of this city, who are wholesale dealers in flour and grain; I have been in that business as clerk and partner about 14 years. I knew the schooner

C. W. Chapin in Dec., 1862; she was then lying at Bushwick creek; she had a cargo of corn and flour on board, which were placed in the hands of our firm for sale; the flour was sent by us to Burdett, Jones & Co., auctioneers, for sale, and we sold the corn ourselves. There were 3 lighter loads of corn; one lighter was the Texas, another the Frank, and the name of the other I do not recollect. The last lot of the corn was put on the last-mentioned lighter whose name I don't recollect; this lot was a great deal poorer than the other lots, and had more mud in it; some of it was half mud; it was a very poor lot of stuff. This last lighter load was sold; I think there was in it from 300 to 400 bushels, not over that; it was not measured. That lot was sold to the Glen Cove Starch Co. for fifteen cents a bushel;
145 it was not delivered to the purchasers, but was lost while on the passage to them. I am acquainted with the market value of corn in New York in December, 1862; the market price of corn in good order and condition, known as best prime western high-mixed corn, well cleaned by hand, on the first three or four days of December, 1862, was 68 cents per bushel; we bought several cargoes about that time; that was the lowest price at that time.

Cross-examined:

We were to deliver the corn by the last lighter at Glen Cove; we employed the lighter to take the corn; I saw the corn when it was put on board that lighter; I did not go with the lighter. I was informed that the corn was lost; we did not collect or call for the pay; the corn was not insured, and we did not call on the lighter for pay, and the lighterman did not call on us for his lighterage.

STEPHEN K. LANE.

Sworn to before me, April 1, 1864.
[SEAL.]

WM. D. JONES,
Not. Pub., 74 *Wall St.*

I consent that the foregoing deposition be read in evidence, upon the reference before the commission in this action, in the same manner and with like effect as if the same had been duly taken before a commissioner.

C. VAN SANTVOORD, *Proctor for Cl't.*

Dated New York, April 1, 1864.

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller Hypodame, &c. Deposition of Stephen K. Lane for libellants. Owen, Gray & Owen, l'b'ts, proc's.

146 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry W. Slocum, being duly sworn and examined as a witness for the libellants in this action, deposes and says:

I reside at Providence, Rhode Island, and am a dealer in lumber there, and have been for about 14 years. In November, 1862, I purchased a quantity of black walnut and pine lumber of Joseph Rathburn, of Albany; the bill hereto annexed is a correct bill of the lumber so purchased. I received the whole of the black walnut lumber and all of the pine lumber in the bill except 272 feet; I received it at Providence by one of the vessels of the Merchants' Line; I think it was the sloop Oregon, but am not positive; this was in the latter part of December, 1862. I paid Day & Sprague $40 for freight on the lumber from Fauroat's to New York, and also paid for freight on the lumber from New York to Providence $51 87; the last was paid to the Merchants' Line. When it arrived at Providence it was taken out of the sloop and placed on Cady & Aldrich's wharf, and was piled up there. It was measured by Mr. Lee, a deputy surveyor of that place;
I was there the whole time while it was being measured, and
147 I know the number of feet which was received there only from
the measurer's statement. I don't recollect selling any pine strips like these in December, 1862; the market price for such lumber in December, 1862, was $45 per thousand feet, or 4½ cents per foot. When the lumber was received it was damaged by being broken and split; the largest boards, which were the most valuable, were split. I have sold all the lumber unless it is a few of the pine strips. It sold for less than it would have sold for if it had not been damaged; I got from 6 to 8 cents per foot for the black walnut; that was a fair price for about half of it; the other half would have sold for about 10 cents per foot if it had not been damaged as I have mentioned. I can't say that the pine lumber sold for any less by reason of its having been damaged.

Cross-examined:

I bought this lumber by an order, was not there myself personally; I know nothing about the correctness of the bill except from information; have had lots of lumber come through without being damaged; I never saw any part of this lumber until it arrived at Providence. I retail and wholesale lumber; I sold this lumber at retail; I have been a dealer in lumber in Providence since 1848, and worked at it before
that time. The dealers in lumber at Providence get the most
148 of their lumber from the Albany market; sometimes we get it
here, when we get short, at New York, but generally at Albany. I know that the prices in the bill were the market prices at Albany at that time. Hiram Hill and myself are the only dealers at Providence in the fancy woods; he gets his supplies in Albany also; that is the market where we make our purchases. These pine strips are clear pine, 6 inches wide by an inch thick, and 12 or 14 to 16 feet long; a strip 14 feet long and 6 inches wide makes 7 feet, and divide 272 feet by 7 would give the number of strips. The prices mentioned in the bill are the dollars per 1,000 feet. The price at Albany mentioned in the bill was the market price at Albany, at the time, for lumber of that kind, which was not split or broken. Lumber advanced in price from the time this was purchased and before it was

sold. The freight on lumber from Albany to Providence in Nov. and Dec., 1862, was $4 50 per 1,000 feet of hard lumber, and $300 per 1,000 feet for soft lumber.

H. W. SLOCUM.

Sworn to before me, February 19, 1864.
[SEAL.]
WM. D. JONES,
Notary Public, 74 Wall St.

We consent that the foregoing deposition be read in evidence upon the reference in this cause, in the same manner and with the
149 same effect as if duly taken before a commissioner, subject to all legal objections and exceptions.

Dated New York, February 19, 1864.

C. VAN SANTVOORD, *Proctor for Cl't.*

150 ALBANY N. Y., *Nov. 28th*, 1862.

Bo't of Joshua Rathburn—

4,962 f't 1½-inch walnut pl'k, at $43	$213 37
140 f't cull's, at $21	2 94
3,302 f't inch cull's b'ds, at $41	135 38
59 f't cull's, at $21	1 24
Half mast	1 06
7,248 pine strips, at $29	210 19
Cart'g	4 08
Shipp'd per sch'r C. W. Chapin.	$568 26

ALBANY, N. Y., *Feb'y* 3, 1864.

I have compared the above bill of lumber with the original entry on my blotter and find the same to be correct, and that the above No. of feet of lumber, am't'g to 568\frac{26}{100}$, was shipped in sch'r C. W. Chapin on the 28th of Nov'r. 1862, to Mr. H. W. Slocum, Prov., R. I., and that the same is correct according to the best of my knowledge and belief.

JOSHUA RATHBURN.

CITY AND COUNTY OF ALBANY, *State of New York, ss:*

Sworn to before me this 3d day of February, 1864.

JAMES F. CROSBY,
Notary Public.

151 We consent that the foregoing affidavit of Joshua Rathburn, be read in evidence upon the reference in this action, with the same effect as if the said Rathburn had been personally present and examined before the commissioner, and had given his testimony in the same words, subject to all legal objections and exceptions to the relevancy of said testimony.

Dated New York, February 19, 1864.

C. VAN SANTVOORD,
Proctor for Cl't.

Indorsed: U. S. district court. Chester W. Chapin and *al. vs.* The Propeller Hypodame, &c. Depositions of Henry W. Slocum and Joshua Rathburn for libellant. Owen, Gray & Owen, l'b'ts, proct's.

152 U. S. district court.

CHESTER W. CHAPIN *et als.*
vs.
THE PROPELLER HYPODAME, &c.

Daniel E. Day, a witness produced and examined on behalf of the libellants, being duly sworn, deposes and says as follows:

I reside at Providence, Rhode Island, and a member of the firm of Day & Sprague at that place. The firm is composed of myself and Samuel S. Sprague. The business of the firm is buying and selling flour and grain, and also selling on commission; that has been their business for 12 years past. I am acquainted with corn and with the market value thereof at Providence, and also at other places where I have had business. On or about November 25, 1862, our firm of Day & Sprague bought of G. M. Griffin & Co., of Albany, 3,558 bushels of best yellow corn, which, I am informed, was put on board the schooner C. W. Chapin, on November 26th and 27th, 1862, consigned to us at Providence. The corn was purchased at the market price at Albany at the time of the purchase; the price was sixty-two cents per bushel, amounting to $2,205 96. The commissions of the bro-
153 ker who made the purchase, and which we paid him, were one-half cent per bushel, 17 19, and we paid one half the expenses of weighing according to custom, 7 83, making the total cost at Albany 2,231 78. I first heard of the collision by telegraph from the captain on the 2d of December, 1862. The captain asked me to come on to the wreck near Peekskill. I came in pursuance of such request, and went directly up. I consulted with the captain and also with parties in New York in regard to the best and cheapest mode of raising the vessel, and returned to Providence. In a few days—about three days afterwards—I returned to New York, and on further consultation with the captain and others, I became convinced that the vessel could not be raised except by a derrick. After she was raised Mr. Allen, the agent of the Western Transportation Co., said that that was the only way in which she could have been raised. I went with the captain to the derrick co., and there a contract was made for the raising of the vessel and bringing her to New York. I don't now recollect whether the contract was in writing or not. The price was $2,000 for raising the vessel and bringing her to New and putting her on the beach, or $100 less if, when raised, it should be found that the leak could be stopped where the vessel was. I went up to the wreck, and was there when she was raised by the derrick. It was
154 found impossible to stop the leak there, and she was brought by the derrick company to New York and hove on the beach in Bushwick creek, where the cargo was discharged. She was only raised so that her decks were even with the top of the water, and the corn and flour were under water from the time of the collision until

the discharge. When I got to the wreck the first time, on the 3d December, 1862, I found that the lumber had pretty much all washed off the vessel, and that about a quarter of it had been picked up, and they were engaged with row-boats in saving and picking up all that could be found. I don't know whether all was saved or not. The lumber which was saved was left in charge of Mr. Fauroat to be shipped as soon as he could find a vessel, as there was then no vessel there by which it could be shipped. The lumber afterwards arrived at Providence, in about a month after the collision, and was received there by our house, and we paid the freight and delivered the lumber over to Mr. Slocum, the owner, who paid us the freight which we had paid. The freight on the lumber which we paid was $40 from Fauroat's wharf, above Peekskill, to New York, and $51 87 from New York to Providence. My expenses in coming from Providence to the wreck and returning twice to assist in finding means to raise the cargo and to advise in the disposal of it, were $71 69. I was occupied in
155 this about 7 or 8 days, and my partner also came on at another time, and was engaged about 3 or 4 days. Fifty dollars is a small compensation for our time and services, and they were worth more than that.

(Objected to.)

On the arrival of the Chapin at Bushwick creek, I had a consultation with Mr. Allen, the agent for the Western Transportation Co. He said that the probability was that the matter would be settled, and that all parties had better meet together; he appointed a time for that meeting, and at the time appointed we met—that is, myself, Mr. Northam, and Mr. Elliott, owners of the vessel, and Capt. Farnham and Otis M. Cook, the owner of the flour, met, with Mr. Allen, at the office of the company. The captain gave the circumstances of the collision and extent of the damages. I gave a memorandum of the corn, so far as I could then give it, and Mr. Cook gave a statement of the flour. He advised that the corn and flour should be sold here, although I thought it had better be taken to Providence, but under his advice I concluded to have the corn sold in New York. He recommended that the corn and flour be placed in the hands of Lane, Phillips & Lane, of New York, to be taken from the vessel and sold, and we accordingly placed it in their hands for that purpose—that is, we directed them to receive it from the vessel and sell it to the best advantage. I wish to state that at the first appointment which Mr. Allen made to meet us, he did not keep the appointment, and
156 the meeting was the next day. I was at the wreck after she was hove on the beach at Bushwick, and a part of the time while the cargo was being discharged; I examined the whole of the corn carefully; it was all soaked, and had swollen so that it had raised up the deck of the vessel and broke the partition between the hold and the cabin. There was a considerable quantity of mud mixed in with and all through the corn, and also all in with the barrels of flour. It was evident that a considerable quantity of the corn had washed out through the hole in the vessel. We received account sales of the corn from Lane, Phillips & Lane showing that the net proceeds were

$421 56; these account sales were received December 23, 1862. On my examination of the corn I found it to be all the best yellow western corn; I mean when I examined it after the vessel arrived at Bushwick; it was all of that kind. The market price for corn of that kind and quality at Providence on the 5th day of December, 1862, was seventy-eight cents per bushel, sold on board the vessel. We had a large stock of that kind and quality of corn at that time, and sold some of it about that date for that price. After the 5th of December, 1862, the market price of corn at Providence kept on increasing daily until it got up to one dollar a bushel. The expense to us of discharging the corn at Providence, if it had been brought there, would
157 have been one-half of a cent per bushel; that is the custom at that port. If the corn had been brought to Providence by the schooner Chapin in good order, we could have sold it at the market price on board the vessel on or at any time after Dec. 5, 1862, at 78 cents per bushel, which would have amounted to $2,775 24, and we should then have paid the freight, amounting to $195 69.

Being cross-examined, he testified as follows:

I was not at Albany at the time of the purchase of this corn. I know what the market price was at Albany only from circulars and letters, and from what was paid for this lot. I was not present at the shipment of the corn on the schooner, and know nothing of my own knowledge as to the quantity shipped. I became convinced that the schooner could not be raised except by a derrick when Babcock tried to raise her and failed. I have had no experience in raising vessels before, and did not know that there was such a thing as a derrick. The remark of Mr. Allen, that the only way the vessel could have been raised was by a derrick, was after the vessel was brought to New York, at a meeting with him at his office. I don't know of Mr.
158 Allen's being at the wreck. I don't recollect how he came to make the remark. I was present when the contract with the derrick was made; it was at their office near the foot of Broadway. The corn was in the hold of the vessel. I was not there at the time of the collision. At the time I saw the wreck the corn was under water. The corn was discharged on a beach on the East river. I do not know the name of the point; I was not present at all of the discharge; I was not there when it commenced; I went there early in the morning, just as they were about commencing that day's work; they had been discharging the day before and a part of the night before, and continued it on the day I was there, into lighters and vessels. I only know from information that they had been discharging the day and night before. I first went to the wreck when I received a despatch from the captain, and started that same night. I don't recollect the day of the week or month. I was not present when the lumber was put on board the vessel, and do not know what quantity was put aboard. I had not seen the pile of lumber before I went up to the wreck. When I say that pretty much all the lumber had washed off, I mean that there was but little in the vessel when I arrived there. There was some lumber on the shore or wharf, quite a pile of it; they

were picking up lumber; a boat was down the river picking up the lumber in the inlets; they also went down and found some lum-
159 ber which a watchman on the railroad had sold, and they took it. I did not see any afloat; all that I saw was what was still on the vessel and on the dock, and what they brought up in the boat. I did not count or measure any of it. The lumber was left in charge of Fauroat; it was shipped by him to New York, and from N. Y. to Providence, where we received it. I was present when the lumber was put in charge of Fauroat. I gave him the directions how to ship it. The freight from Fauroat's wharf to New York was $40, and $51 87 from New York to Providence. It was transhipped at New York to another vessel belonging to Bowen's line. I can't tell at what rate that freight was. I made up my bill of expenses by the items as they were; that was the aggregate. I came and went by rail both ways; it merely includes travelling expenses; it includes the expenses in New York, where I staid one night; it does not include board at the wreck. I did not perform any manual labor or services towards raising the vessel. I came here and made the contract with the derrick co. together with the captain. I was a party to the contract, and responsible for the pay. I went up to see that the derrick perform the contract. The 7 or 8 days were spent in doing that and travelling back and forth. I went up first to see what could be done, and then made the contract, and went up again to see that the contract was performed. The $71 69 was the travelling expenses for this, and the $50 was for my time so spent in making the contract. I was there in the afternoon, and
160 they gave us their terms; we went again in the morning, and were there from 8 to 12 o'clock nearly. Mr. Allen advised that the corn should be sold here; this was after the vessel had arrived here. I can't tell why; I had had previous dealings with Lane, Phillips & Lane. Allen suggested them before I mentioned them. We called upon Mr. Allen first, and then the appointment was made which he did not keep. When I examined the corn a part of it was in the hold and a part in the lighters by its side. I went down into the hold and the vessel was open nearly the whole deck, which I supposed was caused by swelling of the corn. I also went into the cabin, which was broken in by the swelling of the corn, as I supposed. I thought a considerable quantity of the corn had run out of the hole made by the propeller, because the corn was away from the hole, and the place where they were taking the corn out was more in the middle of the vessel. I have not here the account sales from Lane, Phillips & Lane that will show the quantity sold. I know nothing personally about the condition of the corn when purchased. The market value depends upon the quality and condition of the corn. When I state what was the market price of corn of the kind which I describe as best yellow western corn, I mean corn of that description of good merchantable quality. I know the sales of corn of that kind, of lots from 100 to 1,000 bushels, at Providence, from Dec. 1 to
161 Dec 5th, 1862. We made sales on the 5th Dec., 1862, at Providence, of best western yellow corn, in lots of from 100 to 1,000 bushels, for 78 cents per bushel, both from store and vessels.

These sales were made as early as Dec. 5th. In my statement that the corn at 78 cents a bushel would have amounted to $2,775 54 I assumed the number of bushels to be 3,558.

Re-direct resumed:

From my examination of the corn in the hold of vessel and on the lighters, as I have mentioned, I could tell what the condition of the corn was when put on board. (Objected to.) When I speak of the "condition" of corn we mean the quality and condition when we dig down into a pile of corn where the air has not touched it; the brightness of the corn and the color would be the same, notwithstanding it had been under water, as it was before contact with the water, although it would be swollen.

Q. From the appearance of the corn when you saw it in the vessel, what was its condition and quality when put on board the vessel? (Objected to.)

A. It was, I judge, prime best western yellow corn. The market price at Providence which I mentioned, was the market price of best western yellow corn.

Re-cross:

I have been in business dealing in corn about 12 years in the wholesale trade. The market price of corn of the same description is always higher in Providence than in New York by from 5
162 to 8 cents, 8 cents generally, a bushel. The freight from New York to Providence is from 3 to 4½ cents a bushel. The usual difference in the market price between Albany and Providence is 2 to 3 cents more than that between New York and Providence.

DANIEL E. DAY.

Subscribed and sworn to before me, Jan'y 22d, 1864.
[SEAL.] WM. D. JONES, *Not'y Pub.*, 74 *Wall St.*

We consent that the foregoing deposition be read in evidence upon the trial in this action and reference therein, in the same manner and with like effect, subject to all legal objections and exceptions, *in the same manner* as if taken before a commissioner.

C. VAN SANTVOORD, *Proctor for Cl't.*

Indorsed: U. S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Deposition of Daniel E. Day for libellants. Owen, Gray & Owen, l'b'ts' proc's.

163 U. S. district court.

CHESTER W. CHAPIN and *al.*
vs.
THE PROPELLER "HYPODAME," &c.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Joseph H. Gray, being duly sworn, says: That he is one of the proctors for the libellants in this action. That the libellants all reside out of this district, and more than one hundred miles from the place of trial hereof. That the libel herein was filed on the 17th day of February, 1863, to recover the damages sustained by the li-

bellants as owners of the schooner "C. W. Chapin," and as bailees of the cargo on board thereof, by a collision with the propeller "Hypodame" in the Hudson river on the first day of December, 1862. That at the time of filing the said libel the repairs upon the vessel had not been completed, and the libellants were therefore unable to state correctly the amount of their damages aforesaid, but it was estimated, and was so stated in the libel, that such damages, including the loss of freight and of the use of the vessel, would in the aggregate exceed the sum of $6,000. That stipulations were entered into on behalf of the claimants for the value of the propeller in the sum of $10,000, and the propeller was thereupon discharged from custody. That this cause being at issue, was brought to trial before his honor Judge Shipman in the term of November, 1863, and
164 a decree was made therein on the 8th day of December, 1863, in favor of the libellants, and referring it to a commissioner to ascertain the damages sustained by them. That on the 14th day of June, 1864, the commissioner to whom the same was referred filed his report herein, wherein and whereby he finds and decides that the damages sustained by the libellants as owners of the vessel amount to the sum of $4,577 31, besides interest, and as bailees of the cargo to the further sum of $2,754 90, besides interest, and amounting, together with interest thereon to the date of his report, to the sum of $8,074. That the claimants objected to the commissioner reporting any sum for such damages exceeding the amount of $6,000 mentioned in the said libel.

J. H. GRAY.

Sworn to before me, June 14th, 1864.

JOHN A. OSBORN, *U. S. Com'r.*

165 U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER "HYPODAME," &c.

Please to take notice that upon the foregoing affidavit, a copy whereof is herewith served upon you, and upon the libel, answer, and stipulations filed in this action, and also upon the report of John A. Osborn, esq., commissioner, a motion will be made before the judge of the district court of the United States for the southern district of New York, at the court-rooms thereof, in the city of New York, on the 14th day of June instant, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order that the libel filed in this action be amended in the sixth article thereof, by striking out the words "six thousand dollars" therein, and inserting in lieu thereof the words "eight thousand five hundred dollars," or for such further or other order as may be just and proper in the premises.

Dated New York, June 14th, 1864.

Yours, &c.,

OWEN, GRAY & OWEN, *L'b'ts' Proctors.*

To C. VAN SANTVOORD, Esq., *Claimant's Proct'r.*

166 Indorsed: 17, 453. U. S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Affidavit and notice of motion to amend libel. Owen, Gray & Owen, l'b'ts' proctors.

Due service admitted June 14th, 1864.

C. VAN SANTVOORD, *Proctor for Cl't.*

Filed June 14th, 1864.

167 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms in the city of New York, on Tuesday, the 14th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable William D. Shipman, district judge.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER "HYPODAME," &c. } 17, 453.

On filing affidavit and notice of motion for leave to amend the libel in this cause, and on motion of Owen, Gray & Owen, proctors for libellants, Mr. Vansantvoord, proctor for the claimant, appearing and not consenting, it is ordered that the libel in the above suit be amended in the sixth article thereof by striking out the words "six thousand dollars" therein, and inserting in lieu thereof the words "eight thousand five hundred dollars."

168 Filed the 14th day of June, 1864.

169 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Tuesday, the 14th day of June, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable William D. Shipman, district judge.

CHESTER W. CHAPIN and o'rs
vs.
THE PROPELLER "HYPODAME," &c. } 17, 453.

John A. Osborn, U. S. comm'r, brings into court the report made by him in the above-entitled cause, on motion of Owen, Gray & Owen, proctors for libellants. It is ordered that said report be filed and confirmed, unless exceptions be filed thereto; whereupon Mr. Van Santvoord, proctor for the claimants, file their exceptions to said report.

On motion of Owen, Gray & Owen, proctors for libellants, it is further ordered that the cause be placed on the term calendar and the hearing on said exceptions be set down for Tuesday, the 21st day of June, instant.

170 Filed the 14th day of June, 1864.

District court of the United States for the southern district of New York.

Commissioner's report.

CHESTER W. CHAPIN *et als.*
vs.
THE PROPELLER HYPODAME, her tackle, &c.

In pursuance of a decretal order made in the above-entitled cause on the ninth day of December, in the year of our Lord one thousand eight hundred and sixty-three, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellants for damages sustained by reason of the collision in the pleadings mentioned, and to report thereon to this court with all convenient speed—

I, John A. Osborn, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellants and respondents, and by the witnesses, and have taken and examined the testimony offered in support of the libellants' claim for damages aforesaid, and do find that there is due to the libellants for such damages the respective sums set forth in the annexed statement of items, with the allowances, disallowances, and deductions made thereon. I do further report that in order that the said schedule of items may be more easily comprehended and understood, I deem it proper to explain the manner or mode of the conclusions therein set forth.

The annexed schedule contains all the items of damage which the libellants claim by reason of the collision, and the sums designated on the right of the respective pages are the items claimed and the amounts specified; on the left of the several pages are the
172 items of disallowance and deductions made by the commissioner.

Whenever the whole item or amount is disallowed, no explanation is needed, but the deductions made are hereon explained.

The item $20, paid Faurot for board of crew while engaged about the wreck, seems to have included the board of two of the owners, which I disallow; the deduction of $2 50 is taken therefrom.

A deduction of $25 is made from item $36 63, as the value of the rope borrowed was proved to be worth $25, and not materially injured.

The sum of $35 is deducted from the item $63 89, as that was the value of the coil of rope which was not used and remained by the vessel.

No other partial deductions are made, and I report that there is due the libellants for damages to vessel, including interest to date of report, the sum of $5,025 86
Damages to cargo, including interest to date of report 3,048 14

Amounting in the aggregate to the sum total of 8,074 00

The objections made before me on the assessment by claimant are hereto annexed, and are hereby overruled.

All which is respectfully submitted.

JOHN A. OSBORN, *U. S. Com'r.*

Dated June 14, 1864.

OWEN, GRAY & OWEN, *Proctors for Libellants.*

173 *Items of the loss and damages sustained by the libellants by the collision.*

U. S. district court.

CHESTER W. CHAPIN and *als.*
vs.
THE PROPELLER HYPODAME, &c.

Expenses of repairs to the schooner, her tackle, furniture, &c.:

1862.

Dec. 2.	To cash paid for services of two men in securing the vessels when discovered after the collision	$8 00
	To cash paid for protest	1 00
	To cash paid for telegraph to owners of vessel and cargo	1 80
	To cash paid for captain's fare from the wreck to New York, to obtain assistance to save the vessel, and back	3 57
5.	To cash paid for captain's fare from the wreck to New York and back, for like purpose	3 37
6.	To cash paid for propeller "Joe," bill for towing Mr. Babcock's wrecking vessels from New York to the wreck	185 00
10.	To cash paid for captain's fare from the wreck to New York and back, for the same purpose as above	3 37
	To cash paid for laborers to assist in recovering and saving lumber washed off the wreck	3 75
12.	To cash paid for Faurot for board of the crew while engaged about the wreck	20 00
174 Dec. 14.	To cash paid for captain's fare from Sing Sing to Hunter's Point, to obtain a suitable place for the vessel to discharge, &c.	1 68
	To cash paid for 2 hoes to use in discharging cargo	1 50
	To cash paid for 6 shovels	4 00

1862.		
Dec. 18.	To cash paid for laborers to assist in discharging cargo	$75 08
22.	To cash paid for board of captain and crew at Bushwick from Dec. 11th, where the vessel was taken, and while discharging, &c	13 38
23.	To cash paid derrick co. for raising the vessel and bringing it to Bushwick	2,000 00
27.	To cash paid Bloomfield & Co. for temporary repairs at Bushwick, to enable cargo to be discharged	10 00
	To cash paid crew for extra service in watching, discharging cargo, &c., from the time of the collision	24 00
30.	To cash paid for services and expenses of two men employed to assist the captain in taking the vessel to Fair Haven	13 30
	To cash paid for services of the captain from the time of the discharge of the cargo to Dec. 30th	10 00
	To cash paid for expenses of C. H. Northam in coming to New York to procure means to raise the vessel, &c	37 63
1863.		
Jan'y 9.	To cash paid for services of boy at Fair Haven, to assist the captain in getting the vessel ready for repairs and in making repairs	8 90
175 Jan'y 19.	To cash paid schooner "Lark" and crew for services rendered in picking up and saving lumber washed off the deck	25 00
Feb'y 7.	To cash paid H. & E. W. Wellman for oil, rosin, &c., used in repairing the vessel	3 64
17.	To cash paid Hotchkiss & Co. for sundries used in repairs to vessel.	30 62
18.	To cash paid Hugh Landon for blacksmith's work, &c	3 74
	To cash paid E. Buddington for water casks, in place of those destroyed by collision	5 00
27.	To cash paid John A. Bush for blacksmith work	1 87

1863.		
Feb. 27.	To cash paid for expenses of taking vessel from Fair Haven to Clinton for further repairs	$11 60
March 5.	To cash paid for calker's bill for calking the vessel	47 00
6.	To cash paid George E. Elliott for oil, &c., used in repairs	4 88
12.	To cash paid Nettleton for carpenter's repairs done by him	753 00
18.	To cash paid Niblee for repairs to the rigging	2 00
	To cash paid L. Hull & Sons for sundries used in repairs	20 05
	To cash paid for services of Capt. Farnham from January 9th, in assisting in making repairs	67 50
21.	To cash paid Dent for blocks, &c.	6 25
30.	To cash paid Y. S. Brown for blacksmith work	3 47
	To cash paid Wernham & Kenzel for sail-cloth	6 00
	To cash paid Wernham & Kenzel for storing and carting sails	5 00
	To cash paid for repairing cabin table	1 00
176	To cash paid for repairing quadrant	2 00
	To cash paid for repairing spyglass	1 00
April 7.	To cash paid Woolsey & Terry, for lines to replace those borrowed after the collision, and used to secure the vessel, and also used in the repairs	36 63
	To cash paid Woolsey & Terry for lines and ropes used to secure the vessel, and in the repairs	63 89
		3,530 48

For the value of furniture and provisions destroyed:

1862.		
Dec. 1.	Chest of reef-gearing, &c., $5; 2 draw-buckets, $1	6 00
	Handspikes, 75; 2 marine clocks, $6 50; tarpaulin, $6	13 25
	Stove, $7; crockery, $5; 2 globe lanterns, $5	17 00
	2 lamps, 50 c.; 2 compasses, $7 50	8 00
	Bedding, bed-clothes, pillows, &c	20 00
	Carpet, $6; 2 armchairs, $2 50; 6 stools, $3	11 50

1862.				
Dec. 1.	7 charts, $20; Epitome, $4; Coast Pilot, $3		$27 00	
	Other books, 50 c., scales and dividers,		1 75	
	Beef, $10; pork, 4; bread, flour, and other provisions, $15		29 00	
				$133 50
177	For general damages to vessel and rigging not repaired:			
1862.				
Dec. 1.	Damages to the sails		200 00	
	do. do. standing rigging		50 00	
1863.				250 00
March 5.	For loss of the use of the vessel from the time when she would have arrived at Providence and discharged her cargo, say Dec. 5th, until completed, being 2¼ months, at $334 per month			751 50
1862.				
Dec. 5.	For loss of freight on the corn on board		195 68	
	For loss of freight on the flour on board		53 25	
	For loss of freight on the lumber on board		59 83	
				308 76
	Total damages sustained by owners of the vessel			4,974 24
	Interest on the several items above mentioned from the date aforesaid to June 14, 1864			489 54
	Amount			5,463 78
	Disallowed, $396 93; interest on do., $40 99			437 92
	Total damages to owners of vessel as allowed			5,025 86
178	For loss of and damage to the cargo:			
1862.				
Dec. 5.	For loss and damage to the corn	$1,958 02		
	Interest on do. from Dec. 5, '62, to June 14, '64	209 02		
				$2,167 04
	Damage to the flour	630 01		
	Interest on flour from Dec. 5, '62, to June 14, '64	67 25		
				697 26

For loss of lumber:			
1863.			
Jan'y 1. For freight on transhipment and transporting the lumber from the place of collision to Providence.....	$91 87		
Less the freight agreed to be paid to the schooner.....	59 82		
		$32 05	
For damage to black walnut lumber, ½ of 8,463 feet, 4,231 feet, at 3 c. per foot.....		126 93	
Interest on $166 87 from January 1, 1863, to June 14, '64.....		16 97	
			$183 84
			3,048 14
Damages sustained by the owners of the vessel, with interest as above,		5,025 86	
Do. for loss and damage to the cargo		3,048 14	
Amount.....		8,074 00	

179 The claimant objected to the assessment before me to the following items, which I allowed notwithstanding the objections, and the same are included in the amount of damages reported.

1. The claimants objected to the allowance of the charge, under date of 1862, Dec. 6th, of $185, cash paid propeller Joe's bill for towing Mr. Babcock's wrecking vessels from New York to the wreck, on the ground that, as shown by the evidence, it was an item of damage growing out of the non-performance by Babcock of his undertaking to raise the schooner, and that the same was recoverable of Babcock, if of any one, and that the same was not properly chargeable to the Hypodame in this suit.

I overruled the objection and allowed it as a proper charge.

2. The claimants objected to the allowance of the charge of $751 50, under date of 1863, March 5, for loss of the use of the vessel, insisting that there were no damages proved for loss of time, which are recoverable. That loss of profits which the libellants might have earned by carrying oysters on freight were not recoverable; and that there was no evidence of any market price at which the schooner could have been hired or chartered in the business in which she had been usually engaged. That the result of the evidence was that vessels of the size of the Chapin, 121 tons, were not embraced within any standing offer of the government at New

180 York and Saybrook, and were not in request for charter by the government. But if the captain could have got a charter from the government, it is not shown that it would been a charter in any business in which the vessel had been usually engaged. I allowed the $751 50, being the amount which I conclude, from the evi-

dence, the owners of the schooner could have got under a charter from the government for the time claimed, at four dollars a ton, less probable expenses.

3. The claimants also objected to the items of freight on cargo, under date 1862, Dec. 5, amounting to $308 76, the freight to which the schooner would have been entitled on due delivery of her cargo at Providence, the port of her destination, as coming within the objection against the allowance of loss of profits, and insisted that these claims should be reduced to the expenses incurred on the voyage up to the time of the disaster, amounting, as testified to by the captain, to $80. I overruled the objection and allowed the claim for freight, less $20, for the amount which it would have cost to have completed the voyage as testified to.

4. The libellants, in their claim for loss and damage to the corn, insisted on a valuation of the corn at 68 cents a bushel, the market value of like corn at the place of shipment at the time of the collision, on or about 2d December, 1862.

181 The claimants objected that the valuation of the corn should be the cost of the corn at the market value at the time and place of shipment, on or about 27th November, 1862, which was sixty-two cents a bushel, with the expenses for commissions and weighing added, making the whole cost of the corn on board $2,231 78, instead of $2,419 44, the valuation of the corn at 68 cents, as claimed by the libellants as above. I overruled the objection and allowed the valuation of the corn at 68 cents, the market value of corn at Albany, the place of shipment, at the time of the collision, and the assessment of the damages to the corn is at that valuation.

5. In assessing the damage to the flour the libellants insisted on a valuation of the flour at the market value of like flour at Albany, the place of shipment, at the time of the collison. The claimants insisted upon the cost at the market value at the time and place of shipment, with the addition of the expenses of putting the same on board, as the measure of the value. I overruled the objection in assessing the damages, and allowed the market value of like flour at Albany at the time of the collision, being an advance of 25 cents per barrel on part of the flour, and 12½ cents per barrel on other part.

182 The claimants objected also to the allowance of interest on the several items, and also to the allowances of damages beyond the amount claimed in the libel.

JOHN A. OSBORN, *U. S. Com'r.*

Indorsed: 17, 453. U. S. district court. Chester W. Chapin *et als. vs.* The Propeller Hypodame, her tackle, &c. Commissioner's report. Owen, Gray & Owen, proctors. Conf'm, *nisi.* Filed June 14th, 1864.

183 U. S. district court.

CHESTER W. CHAPIN and OTHERS
vs.
THE PROPELLER HYPODAME, her engine, &c.; The Western Transportation Company, claimant.

The exceptions of the claimant to the report of the commissioners herein, dated June 14th, 1864.

First exception. For that the commissioner has allowed the charge of $185 for propeller Joe, instead of disallowing the same.

Second exception. The said claimant excepts to the allowance in said report of $751 50 for the loss of use of the schooner Chapin, notwithstanding the objection in that behalf.

Third exception. The claimant excepts to the allowance in the report for freight to which the schooner would have been entitled on due delivery of her cargo at Providence, instead of reducing the same as it was insisted by the claimant he should.

Fourth exception. The claimant excepts to the allowance by the commissioner of the valuation of the corn in the assessment of the loss thereon at the market value of like corn at the place of
184 shipment at the time of the collision, instead of valuing the same at the cost at the market value at the time and place of shipment, as insisted upon before the commissioner.

Fifth exception. The claimant excepts to the allowance by the commissioner of the valuation of the flour in the assessment of the loss thereon at the market value of like flour at the place of shipment at the time of the collision, instead of valuing the same at the cost at the market value at the time and place of shipment, as insisted upon before the commissioner.

Sixth exception. The claimant excepts to the allowance of interest on the several items in the report to the date thereof.

Seventh exception. The claimant excepts to the allowance of a greater amount of damage than claimed in the libel.

C. VAN SANTVOORD,
Proctor and of Counsel for Claimants.

Indorsed: 17, 453. U. S. district court. The Propeller Hypodame, her engines, &c., *adms.* Chester W. Chapin and others. Exceptions to commissioner's report dated June 14, 1864. C. Van Santvoord, proctor for cl'm'ts. Filed June 14, 1864.

185 At a stated term of the district court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on Tuesday, the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and sixty-four. Present, honorable William D. Shipman, district judge.

CHESTER W. CHAPIN, CHARLES H. NORTHAM, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A. Farnham
vs.
THE PROPELLER HYPODAME, her engine, boiler, &c.

This cause coming on to be heard on exceptions taken by the claimants to the commissioner's report: now on reading and filing the report of John A. Osborn, U. S. commissioner, to whom the above matter was referred, bearing date June 14th, 1864, and by which there is reported due to the libellants at the date thereof, for
186 damages occasioned by the collision in the pleadings mentioned, the sum of eight thousand and seventy-four dollars, after hearing C. Van Santvoord, esq'r, of council for claimants, and J. H. Gray, esq'r, of counsel for the libellants, on the exceptions to the said report, it is ordered, That the first exception be, and the same hereby is, allowed, and that there be deducted from the amount so reported due the sum of one hundred and eighty-five dollars therein mentioned, with nineteen dollars and seventy cents, the interest thereon, amounting together to two hundred and four dollars and seventy cents; that the second exception be allowed in this, that the sum of two hundred and fifty-one dollars and fifty cents be deducted from the amount reported due for loss of the use of the schooner; that the third, fourth, and fifth exceptions be, and the same hereby are, overruled; that the sixth exception be allowed in this, that there be deducted from the amount so reported due the interest allowed on the item of $133 50, the value of the furniture and provisions destroyed; on the item of $751 50 allowed by the commissioner for loss of the use of schooner; on the item of $288 76 allowed for loss of freight, and on the item of $126 93 allowed for damage to the lumber, amounting together to the sum of one hundred and twenty-five dollars and thirteen cents.

187 And it is, on motion of Owen, Gray & Owen, libellants' proctors, further ordered, adjudged, and decreed that the said report be, and the same hereby is, in all other respects confirmed, and that the libellants recover in this action against the claimants and stipulators the sum of seven thousand four hundred and ninety-two dollars and sixty-seven , the amount so reported due to them as aforesaid, after making the deductions abovementioned, together with the interest thereon from the fourteenth day of June, 1864, the date of the said report, making in the total the sum of seven thousand five hundred and thirteen dollars and seven cents, together with their costs to be taxed.

And on like motion it is further ordered, that out of the proceeds of the stipulation for value of the said propeller "Hypodame" to be paid into the registry of the court, the clerk of this court pay to the libellants or their proctors the amount aforesaid, together with their taxed costs.

And on like motion it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this court, that the clerk distribute the proceeds in satisfaction of this decree.

WM. D. SHIPMAN, J.

Approved. O. G. & O.
Conformable to the decision. C. V. S.

188 Indorsed: 17, 453. U. S. district court. Chester W. Chapin and *als. vs.* The Propeller "Hypodame," &c. Final decree. Owen, Gray & Owen, libell'ts' proc'rs. Filed June 28, 1864.

189 U. S. district court, southern district of New York.

THE PROPELLER HYPODAME, her engine, tackle, apparel, and furniture; The Western Transportation Company claimants,
adsm.
CHESTER W. CHAPIN and OTHERS, libellants.

Take notice that the Western Transportation Company, claimants, hereby appeal to the next circuit court of the United States for the southern district of New York, in the second circuit, from the whole and every part of the decree of the district court for said southern district made and entered in this cause the 28th day of June, 1864, in favor of the libellants.

Yours, &c.,

C. VAN SANTVOORD, *Pr. for Cl'ts.*

N. Y., July 5, 1864.
To GEO. F. BETTS, Esq., *Clerk.*
OWEN, GRAY & OWEN, Esqrs., *Proc. for Libell'ts.*

Indorsed: 17, 453. U. S. district court, southern district of N. Y. The Propeller "Hypodame," &c., *adsm.* Chester W. Chapin and others. Notice of appeal. C. Van Santvoord, pr. for cl'ts. Filed July 6, 1864.

191 circuit court of the United States for the southern district of New York.

THE PROPELLER HYPODAME, her engine, boilers, tackle, apparel, and furniture; The Western Transportation Company, claimants and appellants,
vs.
CHESTER W. CHAPIN, CHARLES H. NORTHam, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A. Farnham, libellants.

To the honorable the circuit court of the United States for the southern district of New York:

The petition and appeal of the abovenamed appellants showeth:

That on or about the seventeenth day of February, 1863, the above-named libellants filed their libel in the district court of the United States for the southern district of New York against the propeller "Hypodame," her engine, boilers, tackle, and furniture, and against all persons intervening for their interests therein, in a cause of collision, civil and maritime, in which libel it is alleged and praying as therein contained, to which said libel the petitioners refer for its contents; that thereafter, on or about the 30th day of March, 1864, the said claimants having executed the necessary stipulations
192 for costs and value, did file their claim and answer, alleging as therein contained, and insisting that the said propeller Hypodame was not liable for the damages claimed by said libellants, and praying that said district court would pronounce against the said libel, and condemn the libellants in costs, as will more fully appear on reference to said answer, and to which for the contents thereof these appellants ask leave to refer. That thereafter the said cause came on to be tried and to be heard before the honorable William D. Shipman, sitting as judge of said district court, on the 20th and 21st days of November, 1863, and the 5th day of December, 1863, upon the allegations and proofs adduced by the respective parties, and said judge having advised thereon, on or about the ninth day of December, 1863, made a decretal order or sentence bearing that date, that the libellants recover in said action against the propeller Hypodame, her tackle, &c., the damages by them sustained by reason of the collision in the pleadings mentioned, with costs to be taxed, and that it be referred to a commissioner of said court to ascertain and compute the amount of such damages and to report thereon to that court, as by reference to said decretal order will appear; that after proceeding with such reference before John A. Osborn, esq., one of said commissioners, he made his report to said court bearing, date the 14th day of June, 1864, to which report exceptions were taken by these appellants; and thereafter, after argument on said exceptions,
193 a final decree was made bearing date June 28th, 1864, overruling certain of said exceptions, and for the recovery by said libellants against said propeller Hypodame, her engine, boilers, tackle, and furniture, of the sum of seven thousand five hundred and thirteen $\frac{97}{100}$ dollars' damages, with their costs to be taxed, as will more fully appear by reference to said decree, to which reference is had for its contents; and these appellants are advised and insist that said decree is erroneous, inasmuch as the said libel should have been dismissed with costs, and for that if said libellants were entitled to a decree for any damages, damages have been which should not have been allowed.

And the appellants for these and other reasons appeal from the whole of the said decree to the next circuit court to be held in the said district, (and on the said appeal they intend to seek a new decision on the facts on the pleadings and proofs in the district court, and other proofs to be produced in the circuit court, and to pray deferent relief,) and they pray that the said decree, and every part thereof, may be reversed with costs, or such other decree thereupon

made as to the said circuit court shall seem just, and the said appellees be condemned to pay to these appellants their costs and damages in the premises.

And these appellants will ever pray, &c.

Dated New York, July 6th, 1864.

C. VAN SANTVOORD,
Proctor and Advocate for Appellants.

194 We admit due service of a copy of the foregoing petition and appeal this 6th day of July, 1864.

OWEN, GRAY & OWEN,
Proc's for Libell'ts.

Indorsed: 17, 453. U. S. circuit court, southern district of N. Y. The Propeller Hypodame, &c.; The Western Transportation Company, claimants and appellants, *vs.* Chester W. Chapin and others, libellants and appellees. Petition and appeal. C. Van Santvoord, pr. for appellants. Filed July 6th, 1864.

Bond for costs and damages on appeal.

195 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE PROPELLER HYPODAME, &c., her engine, &c.; The Western Transportation Company, claimants and appellants,
vs.
CHESTER W. CHAPIN, CHARLES H. NORTHAM, Silas Higgins, Oliver B. Hall, Henry Elliott, John Milman, Jedediah Hurd, and Richard A. Farnham, appellees.

Know all men by these presents that we, Everett Clapp and Andrew V. Stout, are held and firmly bound unto the abovenamed Chester W. Chapin, Charles H. Northam, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A. Farnham, in the sum of sixteen thousand five hundred dollars, to be paid to the said obligees, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 11th day of July, in the year of our Lord one thousand eight hundred and sixty-four.

Whereas the abovenamed appellants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the abovenamed appellants shall prosecute said appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

EVERETT CLAPP. [L. S.]
A. V. STOUT. [L. S.]

Sealed and delivered, and taken and acknowledged, this 11th day of July, 1864.

JOHN A. OSBORN, *U. S. Comm'r.*

196 UNITED STATES OF AMERICA,
Southern district of New York, ss:

Everett Clapp and Andrew V. Stout, being duly sworn, severally depose and say each for himself, that he is worth the sum of sixteen thousand five hundred dollars over and above all his just debts and liabilities.

EVERETT CLAPP.
A. V. STOUT.

Sworn to this 11th day of July, A. D. 1864, before me.
JOHN A. OSBORN, *U. S. Com'r.*

Filed this 11th day of July, 1864.

197 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall, in the city of New York, on Thursday, the 17th day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

CHESTER W. CHAPIN *et al.*, lib'l'nts and appellees,
v.
THE PROPELLER HYPODAME, &c., resp'd'ts and appellants.

The appeal in this cause from the decree of the district court coming on to be heard, Mr. C. H. Owens opens the case, and reads from the apostles testimony on the part of the appellees.

198 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall in the city of New York. on Friday, the 18 day of Nov'r, in the year of our Lord one thousand eight hundred and sixty-four.

Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

THE PROPELLER HYPODAME, &c., *ads.*
CHESTER W. CHAPIN and *als.*

The appeal in this cause being still on hearing, Mr. Van Santvoord is heard on the part of the appellants.

199 At a special term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the City Hall in the city of New York, on

the 27th day of May, in the year of our Lord one thousand eight hundred and sixty-five.

Present, the honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

CHESTER W. CHAPIN, CHARLES H. NORTHAM, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, Richard A. Farnham, lib'l'nt and appellee,

v.

THE PROPELLER "HYPODAME," her tackle, &c.; The Western Transportation Co., claimants.

This cause having been brought to a hearing upon the appeal of the claimant from the decree of the district court, dated June 28, 1864, after hearing E. H. Owen, of counsel for the libellant and appellees, and C. Van Santvoord, of counsel for the claimant and appellant, and mature deliberation being had thereon, it is hereby ordered and adjudged that the propeller Hypodame was the sole culpable cause of the collision, and is liable for all the damages occasioned thereby, and that the decree of the district court in this respect be, and the same is hereby, affirmed.

And it appearing from the record that the decree for the
200 damages and costs occasioned by the said collision exceeded the stipulations given on the discharge of the propeller, and for the costs in the district court, in the sum of $713 19, it is therefore ordered and adjudged that such excess be deducted from the said decree, and that the libellants and appellees do recover against the said propeller, her tackle, &c., and against Everitt Clapp and Andrew V. Stout, the sureties on appeal, and who were the stipulators in the district court, the sum of seven thousand two hundred and fifty dollars for their damages and costs in this action, and that unless the said last-mentioned sum of seven thousand two hundred and fifty dollars, with interest thereon from the date of this decree, be paid within the time allowed by law and the rules and practice of this court, a summary judgment be entered therefor against the Western Transportation Company, claimants, and Everitt Clapp and Andrew V. Stout, stipulators and sureties as aforesaid, and that the libellants have execution to collect the same, with interest as above, according to law and the course and practice of this court.

S. NELSON.

Indorsed: U. S. circuit court. C. W. Chapin *et als. v.* Propeller Hypodame, &c. Decree. Owen, Gray & Owen, lib'l'ts' proct'r.

Filed May 27, 1865.

201 Circuit court of the United States for the southern district of New York, in the second circuit.

THE PROPELLER HYPODAME, her engine, boilers, tackle, &c.; The Western Transportation Company, claimants and appellants,
vs.
CHESTER W. CHAPIN and OTHERS, appellees. } Case.

The claimants, the Western Transportation Company, having appealed from the decree made in favor of the appellees in the district court of the United States for the southern district of New York, the cause came on to be heard anew in this court before the honorable Samuel Nelson, one of the associate justices of the Supreme Court of the United States, at a circuit court held for the southern district of New York, at the city of New York, on the 17th and 18th days of November, one thousand eight hundred and sixty-four.

And on the hearing the libel and answer, and petition and notice of appeal filed in the said district court being read, the counsel
202 for the said Chester W. Chapin and others, the libellants and appellees, read in evidence from the apostles, on the part of the libellants, the direct examination of the witnesses Richard A. Farnham, Edwin C. Stevens, George E. Willard.

And the counsel for the claimants and appellants read in evidence the cross-examinations of each and every of the said witnesses from said apostles.

And thereupon the counsel for the said claimants and appellants read in evidence from said apostles the direct examinations of the witnesses Charles B. Dubois, James Findley, Peter P. Miller, and Elias Crasper.

And the counsel for the libellants and appellees read in evidence the cross-examinations of each and every of the said witnesses from said apostles.

And thereupon the counsel for the libellants and appellees read in evidence from said apostles the direct examination of James Ackley and Addison D. Woolsey.

And the counsel for the claimants and appellants read in evidence from said apostles the cross-examination of said witness.

The libellants' counsel then read in evidence from the apos-
203 tles the interlocutory decree of the ninth day of December, 1863, made in the district court, and the direct examinations of all the witnesses called for the libellant on the reference to assess damages under said decree, and the exhibits referred to in such examinations. And the counsel for the claimants and appellants read in evidence from said apostles the cross-examinations of each and every of said witnesses.

The counsel for claimants then read in evidence the direct examination of Silas E. Evans, a witness on the part of the claimants, upon such reference to assess damages.

And the counsel for the libellants and appellees read in evidence

from said apostles the cross-examination of said Silas E. Evans, and also the order of June 14th, 1864, amending the libel, the report of the commissioner John A. Osborn, esq., made in pursuance of the interlocutary decree of the 9th December, 1863, the exceptions to said report, and the decision and final decree thereon, of the 28th day of June, 1864.

And therewith the evidence closed, and the cause was summed up by the respective counsel and submitted to this honorable associate justice, who, on the 27th day of May, 1865, made his decree
204 herein, affirming the decree of the district court, but directing a deduction to be made from the amount of damages and costs for which said decree was entered of $713 19, the excess thereof over the amount of the stipulations entered into on behalf of the claimants in the district court.

Within case settled by cause.

N. Y., June 30, 1865.

OWEN, GRAY & OWEN, *Lib'l'ts' Proctors.*

Filed July 1, 1865.

We admit due service of a copy of within case this 23 June, 1865.

OWEN, GRAY & OWEN, *Lib'l'ts' Proctors.*

205 Circuit court of the United States for the southern district of New York.

THE PROPELLER HYPODAME, her engines, boilers, tackle, apparel, and furniture; The Western Transportatian Co., cl'm'ts and appellants,

ads.

CHESTER W. CHAPIN, CHARLES H. NORTHAM, Silas Higgins, Oliver B. Hall, Henry Elliot, John Millman, Jedediah Hurd and Richard A. Farnham, libellants and appellees.

The abovenamed claimant, the Western Transportation Company, hereby state to this honorable court that they appeal, and they hereby appeal, to the Supreme Court of the United States from the decree entered in the above-entitled cause with the clerk of this court on the 27th day of May, 1865, so far as it affirms the decree of the district court, and directs the recovery against said propeller Hypodame and the stipulators of $7,250 damages and costs, and so far as
206 it adjudges the propeller or the claimants thereof to be liable for damages from the collision alleged in the libel in this cause, and so far as it adjudges said propeller or the claimants thereof to be liable for the damages allowed thereby.

New York June 5, 1865.

Yours, &c.

C. VAN SANTVOORD,
Proctor for Cl't. and Appellant.

To R. G. WHITE, esq., *Clerk of the Circuit C't.*

Indorsed: U. S. circuit court, S. D. of N. Y. The Propeller Hypodame, her engines, &c., *v.* C. W. Chapin, and *al.* Notice and prayer of appeal to U. S. Supreme Court. C. Van Santvoord, proctor. Filed June 23, '65.

207 Supreme Court of the United States.

THE PROPELLER HYPODAME, her engine, boilers, tackle, apparel, and furniture; The Western transportation Co., cl'm'ts and appellants, *ads.*
CHESTER W. CHAPIN, CHARLES H. NORTHAM, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A. Farnham, libellants.

To the honorable the Supreme Court of the United States:

The petition and appeal of the Western Transportation Company, the abovenamed claimants and appellants, respectfully showeth: That on or about the seventeenth day of February, 1863, the abovenamed libellants filed their libel in the district court of the United States for the southern district of New York against the propeller Hypodame, her engine, boilers, tackle, and furniture, and against
208 all persons intervening for their interest therein, in a cause civil and maritime, for the recovery of damages alleged to have been sustained by them to the schooner Chester W. Chapin and her cargo, by collision with the said propeller Hypodame, on the Hudson river in the State of New York; that process of attachment against said propeller was waived upon your petitioners appearing and filing their claim to said propeller, and entering into stipulations for $7,000, the agreed value of said propeller, and for costs in $250; that your petitioners thereafter filed their answer to said libel, and such proceedings were had in the said cause that, on the 28th day of June, 1864, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the said libellants recover against the propeller Hypodame the sum of seven thousand five hundred and thirteen dollars and seven cents, together with their costs to be taxed, and which said costs were taxed on or about July 8th, 1864, at $450 12; and that after such final decree your petitioners duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby to the said circuit court, and such proceedings were had in the said circuit court that afterwards, on the
209 twenty-seventh day of May, 1865, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be affirmed in respect to the finding and decision that said propeller was infault, and liable for the damage caused by the collision; and it appearing that the decree for the damages and costs occasioned by the collision as assessed and taxed exceeded the stipulations given by these petitioners in the district court on discharging the propeller in the sum of $713 14, it was further

ordered that such excess be deducted from said decree, and that the libellants and appellees recover against the said propeller, her tackle, &c., and against the stipulators, the sum of $7,250, with interest from the date of the decree for their damages and costs; that the stipulators cause their stipulations to be fulfilled, and that the libellants have execution against them.

And these appellants are advised and insist that said decree is erroneous, inasmuch as said libel should have been dismissed with costs, and for that if said libellants were entitled to a decree for any damages, damages have been allowed which should not have been allowed.

Wherefore these appellants appeal from said decree of said circuit court, so far as it affirms the decree of the said district court, or
210 adjudges said propeller or the claimants thereof to be liable for damages from the collision aforesaid, and so far as it adjudges the said propeller or the claimants thereof to be liable for the damages allowed thereby, to the Supreme Court of the United States; and respectfully pray that the said decree of the said circuit court and the libel, answer, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court may be reversed, and a decree made dismissing said libel, with costs, or such other decree made as to the said Supreme Court shall seem just; and your petitioners will ever pray, &c.

Dated New York, June 5th, 1865.

C. VAN SANTVOORD,
Proctor for the Claimants, the Western Transportation Co.

Indorsed: Supreme Court of the United States. The Propeller Hypodame, her engine, boilers, &c., the Western Transportation Company, claimants and appellants, *vs.* Chester W. Chapin and others, libellants and appellees. Petition of appeal. C. Van Santvoord, proctor for appell'ts. Filed June 23, 1865.

Bond for costs.

211 Circuit court of the United States of America for the southern district of New York, in the second circuit.

THE PROPELLER HYPODAME, her engine, &c.; The Western Transportation Company, claimants and appellants,
ads.
CHESTER W. CHAPIN, CHARLES H. NORTHAM, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A. Farnham, appellees.

Know all men by these presents that we, Levi H. Rumrill, of Buffalo, Erie county, State of New York, and Hugh Allen, of Brooklyn, Kings county, New York, are held and firmly bound unto the aforesaid Chester W. Chapin, Chas. H. Northam, Silas Higgins,

Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A Farnham, in the sum of fifteen thousand dollars, to be paid to the said obligors, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the fifth day of June, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas the abovenamed appellants have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York, in the 2d circuit:

Now, therefore, the condition of this obligation is such that if the abovenamed appellants shall prosecute such appeal to effect, and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

LEVI H. RUMRILL. [L. S.]
HUGH ALLEN. [L. S.]

Sealed and delivered, and taken and acknowledged, as to L. H. Rumrill, this 20 day of June, 1865, before me.

[L. S.] WILLIAM C. FITCH,
Notary Public in and for Erie County.

Sealed and delivered, and taken and acknowledged, as to Hugh Allen, this 22d day of June, 1865, before me.

WM. BRUERTON,
Notary Public, N. Y. County.

212 UNITED STATES OF AMERICA, *Erie county, City of Buffalo, ss:*

Levi H. Rumrill, of the city and county aforesaid, being duly sworn, does depose and say that he is a freeholder, and that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

LEVI H. RUMRILL.

Sworn to this 20th day of June, A. D. 1865, before me.

WILLIAM C. FITCH,
Notary Public in and for Erie County.

UNITED STATES OF AMERICA, *Southern dis't of New York, ss:*

Hugh Allen, of the city, county and State of New York, being duly sworn, does depose and say that he is a freeholder within this State, and that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

HUGH ALLEN.

Sworn to this 22d day of June, 1865, before me.

WM. BRUERTON,
Notary Public, New York City.

The above bond and sureties approved; dated June 23, 1865.

SAM'L R. BETTS.

Filed this 23 day of June, 1865.

213 By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit—To Chester W. Chapin, Charles A. Northam, Silas Higgins, Oliver B. Hall, Henry Elliott, John Millman, Jedediah Hurd, and Richard A. Farnham:

Whereas the propeller Hypodame, her engine, tackle, &c., the Western Transportation Company, claimants, has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of said Chester W. Chapin and others, against the said propeller Hypodame, her engine, tackle, &c., stating that the said decree is erroneous, in their petition of appeal alleged, and praying that the said cause may be heard anew, and that the said decree may be reversed; and

214 the said The Western Transportation Company having duly entered their said appeal to the Supreme Court of the United States and filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court of the United States at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern dis't of New York, in the second circuit, the 23d day of June, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the eighty-ninth.

SAM'L R. BETTS.

Indorsed: U. S. Supreme Court. The Propeller Hypodame, her engine, tackle, &c., *vs.* Chester W. Chapin. Citation. C. Van Santvoord, proctor.

215 We admit service of the within citation for Chester W. Chapin and others, the appellees.

N. Y., June 23d, 1865.

OWEN, GRAY & OWEN,
Lib'l'nt Proctors.

Filed June 24, 1865.

Record filed in Supreme Court November 20, 1865.

Wm. C. Bryant & Co Printers 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

Chester W. Chapin and others,
Libellants and Appellees,

vs.

The Propeller "Hypodame," Her Tackle, &c.; The Western Transportation Company,
Claimants and Appellants.

Appellees' Statement and Points.

This is an appeal brought by the claimants of the propeller *Hypodame*, from a decree of the Circuit Court of the United States, for the Southern District of New York, in a case of collision between the propeller and the libellant's schooner, *Chester W. Chapin.*

The collision occurred on the Hudson River, a little below Dunderberg Point, between that and Caldwell's Landing (which is on the westerly side of the river), and near the line of the row-boat-ferry, between Caldwell and Peekskill, on the night of the 1st December, 1862. (Rec., p. 15, fol. 37.

The schooner was proceeding down the river, on voyage from Albany to Providence, R. I., having a full cargo of corn, flour, and lumber. The tide was the last of the ebb; the wind was light and about S.E. The schooner was moving at the rate of 1½ miles an hour. She was on the

westerly side of the Channel, and drawing in towards Caldwell, with a view to anchor, and wait for a change of tide. (Rec., p. 15, 25.)

The propeller was on her way from New York to Albany without a tow, and was going at the rate of seven or eight miles an hour. She had no person properly stationed or acting as look out. After passing Verplank's Point, about two miles below the place of collision, the propeller ran along the easterly side of the river on a course which, if it had been continued, would have carried her to the eastward of the schooner (Rec., p. 15, fol. 35); but when she reached a point well on the schooner's port bow, her helm was put to starboard, and she made a rank sheer and ran directly towards the schooner. The crew of the schooner immediately shouted to have her keep off, but although the shout was heard, she continued on, and struck the schooner's port side, near the cat-head, penetrating ten feet or more into her decks, and causing her to sink before she could be towed into shoal water.

The District Court adjudged the propeller in fault, which was affirmed in the Circuit Court. (See opinions hereto annexed.)

POINTS.

First.—The testimony shows that the propeller was clearly in fault, and responsible for all damages.

I. She was in fault in not having a competent look-out properly stationed and faithfully attending to that duty.

Capt. Dubois says, (Rec., p. 17): "I was in the pilot-house *as look-out*, and James Ackerly was at the wheel." And, again, after stating that he had charge of the propeller as pilot, he says, (Rec., p. 18): "I was look-out; it was dark that night, and I had rather trust myself than any other man aboard."

No person pretends to have acted as look-out except the captain, and he was incompetent, as he had other duties to

perform in piloting his vessel, signalling and passing the descending tow.—(The Ottowa, 3 Wal. R., 268; Chamberlain *vs.* Ward, 21 How. R., 548; Henry *vs.* Balt. Packet, 23 do., 287).

II. The propeller was also in fault in proceeding forward after hearing the shout from the schooner. She should have stopped immediately.—(Nelson *vs.* Leland, 22 How., 48.)

Ackerly, who was at the wheel, says (Rec., p. 21), that when they heard the hail ahead, "I told the captain to stop the boat, there was something ahead; he did not stop her; her wheel was then put to port; I then pulled one bell." The master says that he supposed the hail to come from a row-boat, that he asked Ackerly where it was, and then rang to slow and stop—(Rec., pp. 17, 18).

This delay, however short it may have been, was wrong. The propeller should have been stopped as quickly as possible. If that had been done, it is probable the collision would not have occurred, or that it would have been slight.

III. After having starboarded her wheel, the propeller was again in fault in reversing and putting it to port—(Rec., pp. 17, 21).

It was this which caused the propeller to strike the schooner a blow ranging aft towards the foremast. If the wheel had been kept to starboard the collision would not have occurred. This was the opinion of Ackerly, who, at page 21, says: "If our wheel had been kept to starboard, as we first put it, we should have gone down the river;" that is, she would have swung entirely away from the schooner.

Second.—The schooner was not in fault. The collision was not caused by any act or omission on her part.

I. That she was in her proper place, was well and suf-

ficiently manned, had a competent look-out, and was in all other respects properly navigated, is not controverted. The only fault alleged against her is, that she did not display a light on the approach of the propeller.

II. But under the circumstances she was not required to do so.

1. The law did not at that time require her to carry, nor even to exhibit a light, unless the night was so dark that she could not have been seen by a vigilant look-out on the propeller far enough to have avoided her.

2. It was not so dark but that she might have been seen far enough to have been avoided if there had been any such look-out as the law required.

Capt. Farnham says, (Rec., p. 15, fol. 36): "I think my vessel could have been seen from the steamer by a competent look-out for half a mile."

Stevens, the mate, says, (Rec., p. 22, fol. 63): "I should judge we could see a vessel like the schooner without a light a half a mile; we could see the make of the land."

Willard, the look-out, says, (Rec., p. 25, fol. 59): "I should judge you could see a vessel without a light a half mile; could see both shores so as to see the make of the land."

Crapson, the pilot of the propeller, says, (Rec., p. 20, fol. 48), before he "turned in" he told Ackerly that when the moon went down it would be dark, and to call him if it came on to be very dark, yet he was not called.

III. Even conceding, for the argument, that the night was dark, yet the testimony shows that the propeller, from the time she rounded Verplank's Point, until she made the rank sheer to the westward, was not approaching directly towards the schooner, but was running on a course to the eastward, and one which if continued, would have left a wide berth between her and the schooner, and therefore until that sheer was made there was no need of a light, and the omission to display one was not a fault.

1. That she would have so passed to the eastward, appears from the following testimony:

Capt. Farnham says: (Rec. 15, fol. 35,) "As she approached us, she was running off towards the larboard, and the more she approached us the more she showed her lights. She was on the line to pass us to the eastward some rods; I think she would have gone forty rods to the east. I saw her lights as she was passing, and when she had reached to a point five points on my larboard bow, she changed her course and came right for my bow, when her lights appeared to be on a straight line.

Stevens (Rec. p. 23, fol. 53,) says he saw the propeller, some time after she came around Verplank's Point, that her light bore a little on their larboard bow, and "he thinks the propeller was then half a mile off; she appeared to be heading up the river, so that the course would have cleared us at that time; she would have gone to the eastward; I think she would have cleared us a quarter of a mile."

Willard, the look-out, says: (Rec. p. 25, fol. 59,) "I should judge the propeller was half a mile off when I first saw her; she bore about a point on our larboard bow; when I first saw her she was running up the river; she did not appear to be coming towards us when I first saw her; she would have passed us to the eastward, on the course she was then; I think that course would have carried her half a mile to the eastward of the schooner."

Capt. Dubois says: Before he starboarded his helm, the propeller was heading so that she would have passed two hundred feet to the eastward of the tow, (which was coming down on a line to the eastward of the schooner,) and that after he turned to the west to pass the tow on his starboard hand, the propeller headed "square up the race," which is almost at a right angle with her first course.

The diagram made by him upon his arrival at Albany, when illustrating to the agents of the schooner, how the collision occurred, corroborates this, and shows that the sheer was very rank.—(Rec., p. 28).

That the original course would have carried the peopeller by in safety, may be reasonably inferred, from the fact that the wheel was reversed and put to port, in order, as Captain Dubois says, "to resume his original course."—

(Rec., p. 17.) He would not have attempted to resume his original course if that had not been safe.

There was no necessity for making this rank sheer to the westward. There was plenty of room to have passed the tow to the eastward, but if not, there was no difficulty in stopping the propeller until the tow had passed.

IV. This sheer was abrupt, rank, and totally unexpected, so that there was no sufficient time afterwards and before the collision to display a light, and therefore the crew, in alarm for their safety, immediately shouted to her to keep off, and they were heard by Ackerly, who was at the wheel of the propeller, before he had got it to starboard—(Rec., p. 21, fol. 49).

The crew of the schooner did not understand the signal whistles, and besides, they were not intended for their government. They were justified in presuming that the propeller would continue her course and pass to the right of the tow, as the statute law of this State required.—(2 vol. R. S. of N. Y., 5th ed., p. 949, Sec. 1.)

V. But if there had been sufficient time to display a light, still that would have been no better than the shout.

It is not claimed by the answer, that it was the schooner's sole duty to display a light, but that she should have done so, or by *hails* apprized those in charge of the propeller of her presence.—(Rec., p. 11, fol. 25).

A light under such circumstances, would not have enabled the propeller to see how the schooner was heading, nor was it of any consequence how she was heading, for she was moving so slowly that her position could scarcely have been changed before she was struck.

6. Even though a light might have been better than the hail, still the schooner should not be held responsible, if, under the impending danger in which she was suddenly placed, without any previous fault on her part, she failed to adopt the best mode of disclosing her presence. (The Genesee Chief, 12 How. R., 450; the Pacific, 21 do., 372.)

7. It is therefore respectfully insisted that the case shows the colision to have occurred solely from the fault of the propeller.

Third.—*As to the damages*—the repairs had not been made when the suit was commenced, and as the damages could not then be correctly stated, the libel alleged that they would exceed $6,000—(Rec. p 3 fol. 6,) and stipulations for costs and value were entered into and accepted for $7,250, (Rec. p 6. 7.) But upon the reference the proof showed, and the Commissioner reported that they amounted to $8,074, whereupon the libel was amended by increasing the sum therein claimed. (Rec. p 72.) The amount so reported upon exceptions taken thereto, was reduced by the District Court to $7,513 07, (Rec., p. 81,) and upon appeal to the Circuit, it appearing that that sum with interest and costs exceeded the stipulations, the excess being $713 19, was struck out, thus reducing the recovery to $7,250 for the damages and costs, that being the amount of the stipulation, (Rec., p. 86.) The claimant filed seven exceptions to the Commissioner's report.

I. The first exception having been allowed, no question arises here upon that.

II. The 2nd exception is for that the Commissioner allowed $751 50 for loss of the use of the schooner while detained for repairs. The objection is not to the time allowed for such detention, but that no damages had been proved which were recoverable, (1) because the proof did not show that the schooner could have been chartered to the Government, and (2) if she could, it would have been in a different employment from that in which she had been engaged, and therefore such loss was not recoverable, (Rec., p. 77, fol. 179, 180.

1. There was competent testimony before the Commissioner, that she could have been chartered to the Govern-

ment, (Rec., p. 35,) and as that was a question of *fact* found by the Commissioner and affirmed by both Courts below, this court will regard it as so far established, that unless a palpable error is shown it will not examine into the record to see if it be sustained by the weight of testimony. (The ship Marcellus, 1 Black. R., 414.)

2. Such employment would not have been essentially different from her previous freighting business, but whether so or not, what she could have earned in such employment was a loss resulting from the collision and recoverable. (Williams *v.* Barritt, 13 How. R., 101—Sturges *v.* Clough, 1 Wall, R, 269.)

III. The third exception relates to the allowance of $288 76 for loss of the freight which the schooner was earning at the time of the collision. The objection is that it was *profits*. The Commissioner allowed the freight which would have been chargeable on a right delivery of the cargo, after deducting therefrom what it would have cost to complete the voyage. (Rec., p. 79.) This was right. Freight pending has always been allowed as part of the damages.

IV. The 4th and 5th exceptions are alike, they relate to the damages to that part of the cargo consisting of flour and grain, (Rec., p. 80.) The objection is that in ascertaining the damages to the flour and grain, the Commissioner took the market value thereof *at the time of the collision*, instead of the *time of shipment.* (Rec. p. 79.

The Commissioner adopted the correct rule, for if the parties had attempted to supply their loss on the day of the collision by purchasing other flour and grain of the same kind and quality, they would have been obliged to pay the market value at that time. (The Anna Maria, 3 Wheat. R., 328; Smith *v.* Cowdry, 1 How., 35, see also MS. opinion of Mr. Justice Nelson, on appeal to the Circuit in Adams *v.* the steamship Ocean Queen, decided in Nov, 1867.

The rule which the claimants seek to have applied would not afford a full and fair indemnity for the loss.

V. The sixth exception relates to the allowance of interest on the several items of damages. The District Court sustained the exception so far as to strike out all interest, except upon the sums disbursed from the time of disbursement; (Rec., p. 81, fol. 186,) and to that extent at least, it was clearly allowable (Cootes Adm. Pr., p. 80; The Dundee, 2 Haggard, p. 137).

VI. The seventh exception was for that the Commissioner had reported the damages at a larger amount than was claimed in the libel (Rec., p. 80.) This exception was obviated by amending the libel, which it was competent for the Court to allow. (Benedict's Adm. Pr., Sec. 483, The Palmyra, 12 Wheat., R. 1; Pratt *v.* Thomas Ware, R., 427.)

Fourth.—If there were any items of damage improperly allowed, still the same will not exceed in the aggregate, the sum of $713.19, which was struck out as above stated, in order to reduce the recovery to the amount of the stipulations, and that sum should therefore be taken into account and be allowed against such items, if any, as may have been improperly allowed. This will be equitable and just. (Sturges *vs.* Clough, 1 Wal. R., 269.)

Fifth.—In conclusion, it is submitted that upon the whole case there was no error in the decree below, and that the same should, in all things, be affirmed, with costs.

E. H. Owen,
Counsel for Lib'lts and Appellees.

CHESTER W. CHAPIN, *et al.*,
vs.
THE STEAM PROPELLER HYPODAME, etc.
} Opinion.

SHIPMAN, J.:—This libel is brought to recover damages suffered by the schooner *Chester W. Chapin* from a collision with the propeller *Hypodame*, on the Hudson river, on the morning of the 1st of December, 1862. The time of the collision was before daylight in the morning, and the place about off Dunderburg Point, a little above Caldwell's Landing. The result of the evidence establishes the fact that the night was dark, and so continued until after the vessels came together. The schooner was bound down and the steamer up the river. Those in charge of the schooner discovered the lights of the steamer after the latter rounded Verplank's Point, some distance below the point of collision. The schooner was moving very slowly, the wind being light from the southeast, and was heading about southwest. She was west of the middle of the river. After the steamer rounded Verplank's Point, she passed a tow going to the westward of it. As she neared the race, she discovered another tow descending the river, and her master decided to go to the eastward of that tow also. But on discovering the light of a vessel at anchor to the eastward, he decided to pass to the westward of this tow, and starboarded his wheel for that purpose. The captain of the steamer says, "As we got her head turned so as to clear the tow, I heard a shout after a few minutes. Ackerly was at the wheel (steamer's wheel), and I told him to slow her. I supposed it was a small boat, and asked Ackerly where it was. He replied that he did not see any. I then reached down to the bell and stopped the boat." He then ported his wheel, and at that instant the steamer's head-light shone on the sails of the schooner, and disclosed her just ahead. The steamer had no lookout except the captain, who was in the wheel-house, and had charge of the navigation of the steamer. Though the night was dark, the Court cannot conclude, from the evidence, that a proper lookout on the

bow of the steamer would not have discovered the schooner in time to have cleared her. The darker the night, the more indispensable was it to have had a lookout, especially in this river, full, as it always is, of vessels. That the captain, in or about the pilot-house, superintending the navigation of the steamer, was not a proper lookout, has been repeatedly decided by the Courts of the United States. (Chamberlain, *et al.*, *vs.* Ward, 21 Howard, 548; Henry, *et al.*, *vs.* Baltimore St. Packet Co., 23 How., 287; The New London Transportation Co. *vs.* The Metropolis, U. S. District Court, June, 1861. Scrap Book, p. 693.) But the steamer was guilty of another fault. She should have been not merely slowed, but stopped instantly on hearing the first hail. Her master should not have waited to converse with his wheelsman, and speculate as to whether the hail was from a row-boat, or any other particular craft. He should have stopped and reversed his engine instantly, on hearing the first hail, which notified him of the proximity of some craft which he could not, or did not see. Had he done so, the Court cannot doubt, upon his own evidence, that the collision would either have been avoided altogether, or, at most, the concussion would have been so slight as to have done little or no damage. The steamer must, therefore, be held in fault, and liable in damages. On this part of the case the Court entertain no doubt. One question remains: Was the schooner in fault, and therefore liable, under the well-known rule, for half the damages? Her fault, if she is chargeable with one, was in not showing a light. This was the only thing she could do except hail (which she did), in order to prevent the collision. The captain had a light standing on the top cabin stair, not far from where he stood at his wheel, and could have displayed it immediately on the steamer's change of course to the westward. There was no occasion for exhibiting it before that time, as the course of the steamer was to the eastward of the schooner. The captain of the latter might well suppose, both from the course the steamer was actually taking, and from the position of the descending tow, which was but little east of the middle of the river, that the steamer would pass to the eastward of the tow, and thus give the schooner a wide

berth. Now, it is insisted by the claimants that had the light been shown on board of the schooner as soon as the hail was given, and immediately after the steamer had changed her course, the latter would have seen her in time, and have cleared her. This, the Court thinks, to say the least, is doubtful. From the proximity of the steamer and the schooner both, to the middle of the river, taken in connection with the speed of the steamer, it is extremely doubtful whether the collision could have been avoided by the exhibition of a light on board the schooner, after the change of course by the steamer. There were alarm and confusion on board the former, immediately after the steamer's head was turned toward her, and she cannot be held to the exercise of perfect skill and judgment, when thrown into sudden danger by an unexpected and rapid change of position on the part of the steamer. The conclusion of the Court, that the time, and distance from the point where the steamer changed her course, to the point where the vessels collided, was too short to avoid a collision, is strengthened by the statement and explanatory diagram of the captain of the steamer, given to the agents of the schooner, after he arrived in Albany. On the whole, therefore, though not wholly free from doubt, the best conclusion of the Court is, that the schooner is not liable for any part of the damage. The steamer was clearly in fault, in two particulars: First, in not having such a lookout as the law requires; and second, in not stopping and backing, the moment she was warned of danger. And, though it is possible that an exhibition of a light on a schooner, at the instant the *Hypodame* changed her course, might have prevented a collision, or moderated the blow, still, as that change of course was abrupt, and within a short distance of the schooner, it was well calculated to produce alarm, and prevent the exercise of the best judgment of those in charge of the latter. As no fault of hers had tended to produce the proximity of the vessels, or the change of course by which they were brought into danger, the Court is of opinion that the schooner is not liable for an error of judgment in a moment of sudden peril, which she, up to that time, had had no agency in producing. Let a decree be en-

tered for the libellants, with an order of reference to com pute the damages.

Mr. Justice NELSON, on appeal, gave the following brief opinion, stating his conclusions:

"I concur with the Court below, that the propeller was "wholly in fault in the collision that occurred between her "and the schooner *Chester W. Chapin*, and also in the "allowance of damages.

"But the Court erred in according damages to an "amount beyond the stipulation given on the release or "discharge of the vessel from the attachment. There must "be a deduction from the decree, of $513.07."

Wm. C. Bryant & Co., Printers, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

The Propeller Hypodame, her Tackle, &c., The Western Transportation Company,
Claimants and Appellants,
vs.
Chester W. Chapin *et al.*,
Libellants and Appellees.

Statement of the Case and Points of the Appellants.

Statement of the Case.

Appeal, in a case of collision between the propeller *Hypodame*, and the schooner *Chester W. Chapin*, from a decree of the Circuit Court for the Southern District of New York in the Second Circuit, adjudging that the propeller "was the sole culpable cause of the collision, and liable for all the damages occasioned thereby" and affirming the decree of the District Court in that respect. (The decision on p. 86 of the printed case.)

The schooner, with a cargo of corn, flour and lumber on board, was on a voyage from the city of Albany, whence she had departed on the 28th November, 1862, to Providence, Rhode Island, and was bound down the Hudson River.

The propeller had left the city of New York on the evening of the 30th November for Albany, and was bound up the river.

The collision occurred on the morning of December 1st, 1862, between four and five o'clock, before daylight, off the point of the Dunderbergh mountain, on the Hudson, opposite to Peekskill, which last place in on the east side of the river, in the Highlands of the Hudson. (See the testimony of Richard A. Farnham, one of the libellants and part owner and master of the schooner, as to place of the collision. Fol. 74.)

The Court is referred to a copy of a section of the map used on the trial and submitted herewith, for the location of the places referred to in the evidence, Vredideka or Dideka Hook, Verplank's Point, the commencement of the Highlands going up, Gibralter or Caldwell's, the Dunderbergh, Peekskill, the Race, &c.

The circumstances of the collision, stated on information and belief, as alleged in the libel, are set forth in the third, fourth and fifth articles thereof. (Fols. 4 to 6.)

The counter statements of the claimants, stated on information and belief, as alleged in their answer, are set forth in the fourth article of the answer, from fols. 22 to 27.)

The facts established by the evidence are, that the propeller, after rounding Verplank's Point, changed her course from one to the eastward to a course to the westward, from apprehended danger of passing to eastward of a steamtug and tow descending the river in the Race above the place of the collision, after and upon giving the usual signal by two blasts of the steam-whistle to the descending tow, and receiving a reply from the steamtug by two blasts of the steam-whistle; that this change of direction was directly toward the place of the schooner, at the time unseen by reason of the darkness from on board the propeller but of which change of course the persons navigating the schooner had notice, if not by the steam-whistles through their ignorance as alleged of their import, by the lights of the

propeller, that the place of this change of direction was below or further down the river than where the schooner was at the time, and at a distance in space of about half a mile, and in time of from 4 to 5 minutes and more before the arrival of the propeller at the place of the schooner. That the night was so dark that the schooner could not be seen from below by a person looking up the river into the shades of the Highlands without the exhibition of a light on the schooner to show she was on the river and her place, until too close upon her to avoid risk of a collision. That the custom on the river to exhibit a light to an approaching steamer on a dark night was known to the persons in charge of the schooner. That by swinging or the exhibition of a light on the schooner as the propeller was approaching on the change of direction, the propeller would have been enabled to clear the schooner without coming so near her as to cause any risk of a collision. That the persons in charge of the schooner, who had been on the watch on their vessel fron ten o'clock in the evening to between 4 and 5 o'clock A. M., although they might have exhibited a light, did not do so; and that by reason of this omission the collision happened, notwithstanding the steam of the propeller had been reduced below Verplank's Points, and she had been throttled down to run slow because of the darkness of the night, and a good lookout was kept on the propeller by her master forward, while a competent steersman was at the wheel, and what could be done, was done on the propeller by stopping and sheering to avoid the collision, the proper measure under the circumstances of the case as soon as apprized of danger of a collision.

The Testimony.

Richard A Farnham, one of the libellants, was the master of the schooner, and at her helm. (His testimony, at fol. 34 to 39.)

" He testified at fol. 85 : " We had a light burning on the uppermost step of the cabin stairs—our cabin opens aft—

I had it there to signal with if I should meet a steamer; I think I had shown it before the collision that night." At fol. 36: "I did not display my light, because it was so short a time after the boat got headed toward me; I think my vessel could have been seen from the steamer by a competent look out for half a mile."

How remote the propeller was from the place of the schooner *in distance*, or *in minutes*, or other measure of time, at the time she changed her direction as she was coming up the river toward the schooner, he does not state. But there are statements in his testimony tending to show that the propeller, at the time of such change of direction, was at least forty rods (one-eight of a mile) off and upwards.

He testifies at fol. 34, 35: "Our vessel was heading about S. W.; might have been S. W. by W.; I saw the *Hypodame* as she came round Verplank's Point, nearly two miles off, she was two points on my larboard bow, I did not observe but two lights on the boat; one of them forward and one aft; as she approached us she was running off to the larboard; she was on the line to pass us to the eastward, some rods; think she would have gone forty rods to the east; I saw her lights as she was passing up, and when she had reached to a point five points on my larboard bow she changed her course and came right for my bow, and her lights appeared to be in a straight line, I hailed, &c. My first hail was as soon as her lights (fore and aft) were pointed for me.

Now, at a point five points on the larboard bow of the schooner as the schooner was standing about S. W. the propeller would be at a point further down the river about S. by E. (five points from S. W.) from the place of the schooner and the propeller being at that point, or indeed at any other, below the place of the schooner, going up the river in a line to pass the schooner to eastward, at a distance of forty rods at the time of changing her course from that line to the westward, toward the schooner, was at least forty rods from the place of the schooner at the time of such change, a distance sufficiently remote to negative any inference that there was not abundant time for the exhibition of a light on the schooner, as the propeller was proceeding on

such change of direction towards the schooner in season to have enabled the propeller to have avoided collision, or any risk of collision.

Farnham's thinking, as a witness on his own behalf, that his vessel could have been seen from the steamer by a competent look out, half a mile, is not supported by any fact; he does not pretend that he saw any vessel on the water so far off that night without a light on board; while the fact that he had a light ready to exhibit to steamers he should meet, and the reason given by him for not displaying a light, involves an admission that the night was so dark as to require it.

It further appears, from this testimony of the master of the schooner, that the relative course of the propeller to that of the schooner from a distance below of two miles, after the propeller rounded Verplanck's Point, was plainly indicated by the propeller's lights, one forward and the other aft on the propeller, and was observed by him—these lights opening as to him—as the propeller was standing on a course relative to that of the schooner to pass the schooner to eastward at a distance of forty rods, and closing, as to him, as the propeller was changing her course to westward, which was a course toward the place of the schooner, until the lights were to him on a direct line, indicating that the propeller was heading directly upon and close upon him when, for the first time, he hailed—"Are you coming into us," &c.

Edwin C. Stevens was the mate of the schooner and on deck. (His testimony, from fols. 52 to 58.)

According to his testimony, at fols. 54 and 57, he saw the propeller when she was a half a mile off; she appeared to be heading up the river, on a course to clear the schooner to the eastward a quarter of a mile; how far she was off, when he discovered by her lights that she had changed her course, he could not say, but he should think the propeller was from five or six of the schooner's lengths off when they began to hail.

He appears not to have observed when the propeller was changing or had first changed her course from a course to clear the schooner to eastward a quarter of a mile. But, if

from a course to pass the schooner a quarter of a mile off to eastward, it follows that the change was from a point remote from the schooner at least a quarter of a mile.

The effect of this testimony of the mate is to show that the propeller, on a course to pass the schooner to eastward, before the change of direction toward the schooner, was on a course to pass the schooner at a greater distance to eastward than testified to by Farnham, the master, and that consequently the place of the change of direction from that course was more remote from the schooner than inferrible from the course to eastward, as testified to by Farnham; and to show that the hails from the schooner were not until some time after the propeller had changed her course toward the schooner when the propeller was within five or six of the schooner's lengths off.

In respect to the matter of the darkness of the night, and exhibiting a light, he testified on direct as at fol. 53, and on cross and re-direct as at fol. 58.

George E. Willard was the third and last witness from the schooner. (His testimony, fols. 58 to 63.) He was forward on the deck of the schooner.

According to his testimony, at fol. 59: The propeller coming up on a course to the eastward relative to that of the schooner was on a course that would have carried her past the schooner to eastward half a mile before the change of direction. He heard the whistle, and it was not long before he observed that she was "coming into us," and was frightened and hallooed, (fol. 60.) I should say she was not more than five of the schooner's lengths off when I saw that she was coming into us.

At fol. 62: There was no light shown to the propeller that I know of.

He differs from Farnham and Stevens in estimating the distance at which the propeller would have passed the schooner to eastward at half a mile on a course relative to that of the schooner to eastward before the change toward the schooner, which last he appears not to have observed until the propeller was close upon him.

If a course to pass the schooner to eastward, from which the propeller changed toward the schooner was a course

to pass her at a distance of half a mile, it follows that the point of this change was half a mile off.

As to the darkness of the night and the matter of a light, he testified as in fol. 59, and in fol. 60.

Neither of these witnesses from the schooner, testify to any fact observed by them to justify, or tending to justify, the statement that the schooner, without the exhibition of a light, could be seen where she was at any distance before a close approach to her.

Charles B. Dubois was the master and pilot of the *Hypodame*, and before and at the time of the collision was acting as look-out, while James Ackerly, a competent steersman, was at the wheel.

(His testimony, from fol. 39 to 46.)

As he testifies, (fol. 39): I came on deck just below Dedika Hook, between one and two o'clock; it was very thick and dark; the pilot-house, about eighteen feet from the stem, was the best place for a look-out; I was in the pilot-house on the look-out, and James Ackerly was at the wheel.

At fol. 40, I saw a tow pretty well to eastward, I made up my mind at first to go to eastward of her, but I discovered a vessel at anchor near the east shore and I was afraid I should not have room to clear this steamer's hawsers; I signalled by two whistles that I would go to the westward; as we got her head turned so as to clear the tow [to the westward], I heard a shout *after a few minutes.* Ackerly was at the wheel and I told him to slow her. (Fos. 43, 45), this change to westward was from a course headed two points to eastward of the descending tow to a course upon which the tow bore one and a half points on the propeller's starboard bow.

At fol. 44, I should think from 4 to 5 minutes from time I changed course to westward, when gave signal by the whistle, till I heard hail from what proved to be the schooner; from hail to the collision short, had time to remark where is that small boat, time to count five or six slowly. If a light had been showed after I changed my

course and before the hail, I could have changed my course or stopped and cleared her. If a light had been showed at the time I heard the hail, I think I might possibly have cleared her then.

Returning to fol. 40, I supposed it a small boat [from which the hail was heard] and asked Ackerly, where it was; he replied, he could not see any, I then reached down to the bell and stopped the boat, shifted my helm a port, supposing from the hail, there was something in the way. * * The first thing I saw was our head light right on the schooner's jib From the time when our head light struck her sails till the collision you could count five or six, not more. After we backed off I hailed them and asked, why they did not have a light, somebody answered, we haven't got no light.

At fol. 41, the first intimation I had that a vessel was in the way was our light on the sails, I supposed the hail proceeded from a ferry-boat a row-boat that runs there. If the vessel had shown a light, I could have cleared them. It is the usual practice on sail vessels to show a light. There was time to show this light after the hail. * * We could possibly have seen a vessel three times the length of this room that night at that point.

At fol. 43, the wheel was not put hard to starboard, one turn of the wheel. I heard the hail; the sound of the hail was immediately ahead, as near as I could judge.

At fol. 44, we got our wheel hard a port before the collision. When I first saw the schooner she was a little on my larboard bow, heading toward the western shore.

At fol. 43, we were running six miles an hour when we blew the whistle.

At (fol. 45,) we were not going more than 3 to 4 miles, (just before the collision.)

At (fol. 42,) on page 18, he testifies, in answer to the questions by the Court as there stated; and in the same folio, a little further on, "I was look-out; it was dark that

night, and I had rather trust myself than any other man on board."

James Findley, engineer, on duty at time of collision. (His testimony, fols. 46, 47.)

According to his testimony, the bells to slow and back were obeyed. Before that he heard the blasts of the steam whistle. "The order to slow was about five minutes after, as near as I can remember; between these times I had gone below to oil the engine and got back." [Here is testimony strongly corroborative of the testimony of Dubois to the interval between the change of direction toward the place of the schooner, which followed the blasts of the steam whistles, and the bell to slow before the collision.]

He further testified, it would take one-and-a-half to two minutes to bring her to a dead stop. It was a dark night, kind of raining, thick weather, but not foggy. Came out on deck after the accident, but did not see the schooner when I first came out; looked and tried to see her. I saw her in about a minute. Saw a man come forward on the schooner with a light and heard him say, Good God! we are going right down. Could not see her till I saw the light. It was so dark I could not see an object but a short distance. I saw another steamboat with a tow; saw her lights; it was further up the river. There was a hill on the left hand.

Here was a man near enough to hear a voice on the schooner looking to see, but not able to see her until a man on the schooner came forward with a light, when he saw her by the light.

Peter P. Miller, first engineer, not on duty. (His testimony, fols. 47, 48.)

After stating the build, draft, weight of the propeller, including water, &c., between 200 and 300 tons. I turned in between two and three o'clock; observed the night very dark, heavy, gloomy night. I directed the second engineer, between two and three o'clock, to reduce steam to 45 pounds and throttle her down and run slow because of the dark night. I heard the signals and one bell to check and one to stop. Knew from motion they were obeyed. * * I

came out on deck after the collision run round the vessel and could not see her. I did not see her until we backed down close to her, some time after, when we were backing down to get hold of her.

Elias Crapson pilot, but not on duty until after the collision:

(His testimony, fols. 48–49.)

Came out after the collision, dark night, darker in looking up the race on account of the mountains, lighter as you looked down.

I turned in just above Yonkers, left Ackerly at the wheel; I told him after the moon went down it would be dark; if it is very dark you had better call me; * * when I heard the bells I got up; she struck just as I got on the floor; the collision was just below the Point, about off Kidd's Works.

Cross-examined: We generally keep to the east of tows at this point; if there was a vessel in the way east of the tow I should go to the west.

James Ackerly, who was at the wheel of the propeller, was not called on the part of the propeller, through distrust by reason of difficulty with her master; he was called by the libellants.

(His testimony, fols. 49–50.)

He had piloted tugs up and down the river, and no objection existed to him as a competent steersman.

The above are all the witnesses from the schooner and the propeller, to the circumstances of the collision; and there was no testimony on the trial, except of Addison Woolsey, a clerk at Albany to statements of the master of the propeller at Albany, in a conversation explaining circumstances of the collision; and scratchings on the back of a bill of lading, to give an idea of how the boats came together.

(His deposition, fols. 64 to 70.)

These statements are not evidence to effect the claimants, and as testified to by Woolsey, so far as variant from the

testimony of the master of the propeller, the latter's testimony is corroborated by the concurrent testimony of the witnesses from the schooner, and other witnesses from the propeller. The diagram so called shows nothing but an attempt to give a general idea how the collision happened.

The attention of the master was not called to these statements, and the diagram; but corrected by the evidence in the case, they throw no light on the transaction.

POINTS.

I.—On the change of course of the propeller to pass the descending tow to westward for greater safety in passing such descending tow, after signalling by the steam whistle her intention to do so, toward the place of the schooner, which was unseen from the propeller by reason of the darkness of the night in the place where she was, from a course relative to that of the schooner to pass her from one-eighth to half a mile off, the persons navigating the schooner, with notice of such change of direction by the propeller's lights, should have exhibited a light to show that the schooner was on the river, and her position.

II.—Whatever may be the rule held by the English Courts of Admiralty, or of the American Courts, in respect to the duty of sailing vessels to exhibit a light at night on the high seas, it seems to be the recognized rule in this country, that vessels sailing at night in narrow waters must exhibit a light to an approaching vessel.

> In Jacobsen's Sea Laws, p. 340, it is said: "The want of a lantern in narrow waters, has always been looked upon as an omission and neglect not entitling the party to redress if injured, thus decided at the suggestion of Bynkershoek, in a case pending in the Supreme Court of Holland." To this it is added in

the Scioto, Davies' Reports, 354, 369, by Judge Ware, who adopted in that case the principle of the decision, that than Bynkershoek, on whose advice the decision was made, there is no higher authority in maritime law.

The Osprey, 2 Wallace, Jr., 268; Simpson *vs.* Hard, 6 Whart., 324.

The Indiana, 1 Abbott Ad'y Reps, 339; Flanders' Maritime Law, p. 310, sec. 275.

In Peck *vs.* Sanderson, 17 How., S. C. Reps., 178, a case of a collision between a sailing vessel and propeller on the high seas, the omission to exhibit a light was a controlling circumstance in condemning the sailing vessel.

III.—Under the circumstances of this case, upon the proof of the custom to show a light, and the knowledge of such custom by the master of the schooner, and its necessity, as a measure of common prudence, it was an indespensable duty on the part of the schooner to exhibit it, and by not doing so, the persons navigating the schooner were the authors of her misfortune.

IV.—There was no culpable mismanagement or fault on the part of the propeller in the particulars alleged, or in any other.

1. As to the lookout. The propeller *Hypodame* was not one that carried passengers, nor a large or first-class propeller, but one of a class on our rivers navigated by the master, who is also a pilot, and a steersman, alternating with a pilot and a steersman, and on which the master or steersman, on the master's watch, acts as lookout, and the pilot or steersman on the pilot's watch acts as lookout while the other steers.

The deck on which the pilot-house is, extends up to the stem; she is sharp forward, and the pilot-house within 18 feet of the stem, and the best place for a lookout; a lookout placed further forward would have to sit on an anchor stock. The deck below is enclosed by bulwarks so high that a man placed there could not see out. (Fol. 39.)

In the cases of Champlain *v.* Ward (21 How., 548), Harney *et al.*, *v.* Baltimore St. Packet Company (23 Howard, 287), and the case of the *Metropolitan*, cited to show that the master of the *Hypodame* was not a proper lookout, the colliding steamers were of a larger and different class, having their pilot-houses on hurricane decks higher up, or otherwise less advantageously placed, and employing and requiring in their navigation a fuller complement of men, making it practicable to assign a greater number of different men to separate duties, but without in general securing a better result so far as the safety of their navigation and exemption from casualties is concerned, than is accomplished by a smaller force on steamers of the class of the *Hypodame*.

In the master of the *Hypodame* performing the duty of lookout before and at the time of the collision, while a competent steersman was at the wheel, the propeller had the usual lookout on steamers of her class; and it is submitted that as a person of suitable experience, properly stationed on this vessel, and actually and vigilantly employed in the performance of that duty, he was a competent and sufficient lookout within the requirement of the rule in the above cases, so far as they are applicable to this case.

His having charge of and being responsible for the navigation of the vessel as master or pilot could only operate as an incentive to greater vigilance in performing the duty of a lookout; and there is nothing in the cases cited holding that a master or pilot is not a competent lookout, by reason of his having the charge of or being responsible for the navigation of the vessel if not otherwise actually occupied.

2. As to the lookout. On the proof that the schooner, where she was in the shade of the *Dunderbergh*, could not be seen on a close approach by persons apprised of her

presence without the exhibition of a light, there can be no reasonable intendment that the schooner would or could have been earlier seen by any number of lookouts on the propeller assigned to that special duty; and to impute negligence to the propeller, which had a right to act upon the supposition that if there was a vessel sailing off to westward in the darkness, on the propeller's change of course she would exhibit a light, on the ground that she had no other lookout than is usual on vessels of her class, would seem to be straining a point to charge the propeller.

3. The propeller slowing, stopping her engine and shifting her helm to port on hearing the hail, after she had been on the course toward the place of the schooner for four or five minutes and within five or six seconds of the collision, instead of slowing, stopping and backing, is not, upon the evidence, to be regarded as a fault.

> The sound of the hail was directly ahead, as near as the master could judge. (Fol. 23.)
>
> On hearing the hail, the bells were rung to slow and to stop, and the helm was shifted a-port (fol. 40); and these bells were obeyed, and the engine was still before the collision. (Fos. 46 and 47.)
>
> The testimony of the master of the schooner at fol. 36 shows, that the effect of putting the propeller's helm to port was to change her course, so as to strike a glancing or quartering blow.
>
> This change of direction before she hit probably saved the schooner from being sunk or rolled over, to the hazard of life on board.

The reasons for slowing, stopping and sheering to port instead of slowing, stopping and backing found in the evidence, are, that the propeller, with her water tanks, fuel and engines, was very heavy (fol. 47), and could not be brought to a dead stop in the water in less than one and a-half to two minutes (fol. 46) while she sheered quick.

There is no rule which required the propeller to stop and reverse when the exigency called for a different manœuvre.

If the pilot erred in this matter it should be attributed to

the suddenness of the emergency caused by the omission of the schooner to exhibit a light.

V.—But if the propeller should be adjudged to have been in fault, the schooner was clearly in fault in not exhibiting a light on the propeller's change of direction toward her, and the propeller should not be held responsible for the whole amount of damages.

1. It is a familiar rule in cases of collision between two vessels, where it appears that one of them had neglected an ordinary and proper measure of prevention, the burthen is on her to show that the collision was not owing to her neglect, but would equally have happened if she had performed her duty. (Clapp *vs.* Young, 6 Law Rep., 111.)

In the argument, in the opinion of the District Judge, in exculpation of the schooner from fault for not exhibiting a light, in which he erroneously assumes that the hail from the schooner and the alarm and confusion on board of her were simultaneous with the change of direction of the propeller from a point in so close proximity as to justify it, the process by which he reaches the conclusion that the exhibition of a light at the time of such hail would have been unavailing, was in disregard of the above rule as to the burthen of proof, and is open to the objection that its tendency is to excuse the non-performance of a plain duty, on a mere speculation, and so to weaken the force of obligation.

2. The District Judge overlooked the facts established by the clear result of the testimony of the witnesses from the schooner and the propeller, (above referred to), that the place of the change of the direction of the propeller toward the schooner, with notice by her lights of such change, after signals by the steam whistle, which had the effect to call attention to the propeller, was from a point in a course relative to that of the schooner to eastward, distant from one-eighth to one-half a mile, if not more, from the schooner,

and that the hail, &c., from the schooner was not until after the propeller had proceeded on such change of direction until she was close upon the schooner, and after an interval of four or five minutes after such course toward the schooner.

In this part of the case it is submitted that the District Judge was all wrong.

VI.—The decree appealed from should be reversed, &c.

The following points on exceptions to allowance of items of damage claimed are herewith submitted:

The report of the Commissioner, dated June 14, 1864, is found at (fol. 171 to 173.)

Schedule annexed, setting forth items of loss and damage claimed and allowed, or disallowed from (fol. 173 to 179,) with deductions, amounting to $8,074, the amount reported, including interest to date of report.

Statement of objections made before the Commissioner and overruled by him, from (fol. 179 to 182,) referred to by him in his report.

Exceptions to the Report, fols. 183, 184.

The first exception was allowed.

I. The second exception (fol. 328) was to the allowance of $751.50 for the loss of the use of the schooner.

See this charge in the account (fol. 177), and the ground of objection, before the Commissioner in the schedule to the report, and the ground on which it was allowed. (Fols. 179, 180, No. 2.)

The District Judge, at fol. 186, allowed this charge, deducting $251.50.

The appellants submit that the objection should have been sustained to the exclusion of the whole amount of the charge.

The collision occurred on the night of the 1st December, 1862.

On the 11th, got the derrick to the wreck, and she was brought to Bushwick Creek (Farnham, fol. 80); four days to discharge her, December 13 to 17 (Farnham, 81). After this she was taken to Nettleton's yard, Fairhaven, Connecticut (fol. 8), and commenced to repair on the 5th January, 1863 (to 9th); and repairs done at Fairhaven, completed 14th February, 1863. Farnham recalled, (fol. 105.) Then she was taken to Clinton, twenty-five miles off, and the caulking was finished at Clinton, March 5th, fol. 106.)

A month would have been sufficient time for the repairs, and they could have been done in two weeks near New York, but at an extra cost estimated at $200 to $300. (Bloomfield, fol. 114.) The whole repairs could have been done before Nettleton got to work at Fairhaven.

The reason assigned for not going to work immediately on the discharge of the cargo, was the expectation of getting the work done cheaper at Fairhaven, (fol. 82.) Bloomfield here estimated necessary repairs at $1,800, (fols. 82, 114.) Nettleton at $1,500, (fols. 82, 121.) To save an estimated difference of $300, the schooner was taken to Fairhaven at a loss of time—of all the time beyond a month, or two weeks from December 17. By the 30th December all the repairs could have been done in New York at an extra expense, or without extra expense, by January 17th, upon the supposition that the necessary repairs would amount to $1,800. If the necessary repairs would not amount to half $1,800, the time would be less.

That the estimates were excessive appears from the result.

The whole amount of repairs was between $700 to $900. Nettleton's bill, $753, (fol. 175.) The slow movement about these repairs shows that time was not felt to be important. And the probable reason for this was, that there was no employment for the vessel in which the captain desired to engage. He testifies to going for oysters in former years (fol. 106), but in his second deposition (fol. 108), he testifies that he prefers not to go outside in January or February.

But whatever may have been the reason of the delays, there were no damages proved from loss of time which are recoverable.[3] X Loss of profits which the libellants might

X In general, damages are estimated upon the principle of awarding a pecuniary compensation for an actual pecuniary loss: and the latter is the measure of the former. 2 Green Evid 265. 266, note to p 466 of the 11th vol E.C.L. R. and cases cited.

In the courts of the United States this is the measure of damages in cases of collision. Note to p 12 of 105 E.C.L.R. and cases cited.

have earned from carrying oysters on freight are clearly not recoverable. And there is no evidence of any market price at which the schooner could have been hired or chartered in the business in which she had been usually engaged.

Richard A. Farnham seems to have supposed, in his testimony, that he could have chartered his vessel to the Government during the detention for repairs, at the standing rates of $4.00 a ton, paid by the Government for vessels chartered, from some application to him to charter his vessel, made he does not know exactly when, and which he did not accept, (see his testimony, fol. 86.)

But he is shown to have been mistaken in supposing that vessels of the size of his schooner, 121 tons, were embraced within any standing offer of the Government at New York and Saybrook, as he testified at the place aforesaid, or that vessels of the size of the *Chapin* were in request for charter by the Government, by the deposition taken before the Commissioner of Mr. Evans, which, see (fols. 94, 95.) And if he could have got a charter from the Government, which is not admitted, it is not shown that it would have been a charter in any business in which the vessel had been usually engaged.

The Commissioner allowed the claim as the amount which he concluded from the evidence, the owners of the schooner could have got under a charter from the Government for the time claimed, at four dollars a ton, less probable expenses.

We submit that the evidence did not warrant this conclusion, and if it did, it is not a legal charge.

That the loss of profits are not recoverable in these cases seems to be well settled.

Hunt *vs.* Hoboken Land Company. 3 E. D. Smith, 144, 146.

In the case of the Rhode Island 6, New York Legal Observer, 103, 10th January, 1848, the usual rate of demurrage in the course of the *usual employment* of the vessel, where there is proof of such usual rate of demurrage isrecognized as a true criterion, 6 N. Y. Legal Observer, 105.

S. C. Olcott, Ad. R., 100, not so well reported.

S. C. 2, Blatch., Cir. 113, which see.

In the absence of such proof the interest on the value of the vessel was allowed. In Williamson *vs.* Barrett, 13 Howard, S. C. R., it was decided that the measure of the recovery for the loss of time during detention, for necessary repairs, is the price for which the vessel could have been hired or chartered *in the business in which she had been usually engaged*, the market price for which she could have been so hired.

In the absence of proof of the usual rate of demurrage in the business in which the vessel had been usually employed, or of the price at which she could have been hired or chartered in the business in which she had been usually engaged, or of her value, there can be no allowance for loss of time within the authority of these cases.

Probably the hiring or chartering, in the mind of the Judges in Williamson *vs.* Barrett, was a hiring or chartering at the risk of the parties taking up the vessel or charter.

II. It is admitted that the third exception (fol. 183) to the allowance of freight, notwithstanding the objection thereto before the Commissioner, (fol. 180) should have been allowed.

This allowance is within the objection to the allowance of possible or probable profits which the vessel might have earned.

III. As to the fourth and fifth exceptions, which see (fol. 184,) and the objections and the disposition of them by the Commissioner, (fols. 181, 182.) It is submitted that Smith *vs.* Condry (1 How. S. C. R., 35) is decisive.

What the goods were worth when shipped according to their market value at the place of shipment is the measure according to this case.

IV. The sixth exception (fol. 184) was allowed so far as to exclude interest on estimated items, and all items except payments. I make no point on this.

V. The seventh exception (fol. 184) and objection before the Commissioner, (fol. 182) to the allowance of any greater amount of damages than claimed in the libel, it is submitted, should be sustained.

The Ocean Queen and Adams S. D. of Mi. Nov 8, 1866 S. C. Circuit Court. before Judge Nelson N.Y. Times Sep 20 1867.

To obviate this objection, an application, was made to the District Judge on the date of the Commissioner's report, June 14, 1864, for an order which was made, amending the libel by striking out $6000 therein, and inserting $8500 found in the Apostles, fol. 187. The article amended is found at fol. 6.

The entire damages are alleged in the libel, (fol. 11th) "to exceed in the aggregate the sum of $6000, which the libellants claim to recover in this action."

The vessel was bonded 20th February, 1863, at a valuation of $7000. See stipulation (fol. 15) and order (fol. 16.)

The decree was, that the libellants recover against the claimants and stipulators, the sum of $\$7{,}492\frac{67}{100}$, with interest from 14th June, 1864, making in all $7,563.07, together with their costs, (fol. 187.)

1. The order allowing the amendment was unauthorized.

2. The exception to an allowance of a greater amount of damages than $6000 should have been sustained.

3. In this suit which is in rem., the recovery decreed should have been limited to the amount at which the vessel had been bonded, and the costs to the amount of the stipulations thereof. This so decided in the Circuit Court.

C. Van Santvoord,
Of Counsel for Appellants.

Rule 115, which see.